Supreme Court, U.S.
FILED

10-656 NOV 12 2010

No. 10- OFFICE OF THE CLERK
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IN THE
Supreme Court of the United States

PATRICIA A. MUSCARELLO,

Petitioner,

v.

OGLE COUNTY BOARD OF COMMISSIONERS, et al.,
BAILEYVILLE WINDFARMS, LLC, et al.,

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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815/963-0009

QUESTIONS PRESENTED

1. Whether a "preenforcement facial challenge" to legislation based on the Fifth Amendment's takings clause should be recharacterized as an "as-applied" challenge, and therefore unripe, because the plaintiff alleged that she will suffer economic harm and deprivation if and when the taking occurs.

LIST OF PARTIES

PLAINTIFF-APPELLANT-PETITIONER

PATRICIA A. MUSCARELLO

DEFENDANTS-APPELLEES

OGLE COUNTY BOARD OF COMMISSIONERS, an Illinois municipal Government

BETTY GOCKEN, Chairman of the Ogle County Board of Commissioners,

OGLE COUNTY ZONING BOARD OF APPEALS

BRUCE MCKINNEY, Chairman of Zoning Board of Appeals

MICHAEL REIBLE, Planning and Zoning Administrator

BAILEYVILLE WIND FARMS, LLC, a Minnesota limited liability company

NAVITAS ENERGY, INC., a Minnesota corporation

GAMESA CORPORACION TECNOLOGICA, S.A., a Spanish Corporation

RALPH COFFMAN

SHIRLEY COFFMAN

WAVA M. SCHNEIDERMAN, as Successor Trustee of the Eunice Miller Trust

RAYMOND L. MILLER, as Successor Trustee of the Eunice Miller Trust

LYLE HUNDERTMARK

MARK HUNDERTMARK

JODIE HUNDERTMARK

LEIGH HOLLEWELL

GARY HOLLEWELL

DORIS HOLLEWELL

ROBERT G. BORNEMAN

STEVEN LUNDGREN

JOHN DANIS

CHRIS FILLIPS

JULIE MENNANGA

JOYCE STEINBECK

RANDALL STEINBECK

STEVE LEEK

MARY ROSE KRUPA

RICK LOTT

HARVEY BOLEN

REBECCA SHURTLEFF

JOSHUA BOLEN

JIM HUFF

DEBBIE STEINBACH

GARRETT LEEK

BRENT BACH

DAN BUSKOHL

JOE KERWIN

PAUL EBERTH

GEORGE J. STERZINGER

CHRISTOPHER NUCKOLS

TODD WEEGENS

BARRY KLINGER

THOMAS E. HEWSON, JR.

MICHAEL MCCANN

RANDY PALS

RON KERN

JACK THEDEN

ELDRED ROGERS

JOSE CALVO

DENNIS CRADDOCK

ELMER RHODES

MARCO J. MUSCARELLO

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Muscarello v. Ogle County Board of Commissioners, 610 F.3d 416 (7th Cir. June 24, 2010)(Case Nos. 08-2464 and 09-1381)

Muscarello v. Ogle County Board of Commissioners, No. 06 C 50017 (N.D. Ill. June 24, 2010)

STATEMENT OF THE BASIS FOR JURISDICTION

Petitioner-Plaintiff Patricia Muscarello filed this lawsuit in the United States District Court for the Northern District of Illinois, Western Division after Defendants Ogle County Zoning Board of Appeals and Board of Commissioners granted a special use permit to Defendant Baileyville Wind Farms, LLC for the construction of a wind farm consisting of 40 wind turbines, of which six wind turbines were located immediately surrounding and adjacent to Plaintiff's property. Baileyville is a subsidiary of Defendant Navitas Energy, Inc., which is a subsidiary of Defendant Gamesa Corporacion Tecnologica, S.A.

Counts IV (Taking), VI (Due Process) and VIII (Equal Protection) of Petitioner-Plaintiff-Appellant Patricia Muscarello's First Amended Complaint at Law and Equity alleged subject matter jurisdiction based on a federal question. The United States District Court for the Northern District of Illinois, Western Division dismissed these Counts on February 6, 2007. Plaintiff did not replead them in her Second Amended Complaint at Law and Equity, nor plead any Counts numbered IV, VI or VIII in the Second Amended Complaint.

Plaintiff filed her Second Amended Complaint to correct allegations concerning diversity and alienage jurisdiction. Plaintiff is a citizen of the State of Arizona. No other party is a citizen of the State of Arizona. Defendant Gamesa Corporacion Tecnologica, S.A. is a citizen of Spain. Plaintiff's Second Amended Complaint alleged diversity and alienage jurisdiction as to Counts X (Trespass) and XI (Public Nuisance), and supplemental jurisdiction as to Counts I (Declaratory Judgment), II (Administrative Review), III (Writ of Certiorari), V (Taking Under Illinois Law), VII (Due Process Under Illinois Law), IX (Equal Protection Under Illinois Law) and XII (Injunction).

The District Court dismissed Counts I, II, III, V, VII, IX, X, XI, XII of Plaintiff's Second Amended Complaint on May 16, 2008. Plaintiff timely appealed the February 6, 2007, and May 16, 2008, orders by Notice of Appeal on June 12, 2008.

The United States Court of Appeals for the Seventh Circuit affirmed the judgment of the United States District Court for the Northern District of Illinois, Western Division in *Muscarello v. Ogle County Board of Commissioners*, Nos. 03-2464 and 09-1381, by a judgment, entered June 24, 2010, which dismissed all of Plaintiff's claims.

On July 7, 2010, Petitioner filed Appellant's Motion to Extend Time to File Petition for Rehearing, Appellant's Motion for Substitution of Attorneys and Appellant's Motion for Leave to File Third Amended Complaint in Law and Equity Pursuant to 28 U.S.C. § 1653. On July 8, 2010, Petitioner filed her Corrected Motion for Leave to File Third Amended Complaint in Law and Equity Pursuant to 28 U.S.C. § 1653, and Plaintiff-Appellant Patricia Muscarello's Petition for Rehearing Pending Ruling on Motion for Extension of Time. The Court of Appeals granted Appellant's Motion to Extend Time to File Petition for Rehearing, and Appellant's Motion for Substitution of Attorneys, and extended the time for Petitioner to file its petition for rehearing until July 22, 2010.

Plaintiff's Corrected Motion for Leave to File Third Amended Complaint in Law and Equity Pursuant to 28 U.S.C. § 1653 asked the Court of Appeals for leave to file a Third Amended Complaint to allege diversity and alienage jurisdiction for Counts I, II, III, V, VII, IX and XII. The Court of Appeals denied the Corrected Motion.

Petitioner filed her Petition for Rehearing on July 22, 2010, and the Court of Appeals denied the Petition for Rehearing on August 17, 2010.

The basis for jurisdiction is 28 U.S.C. §1254(1), which allows review by the Supreme Court of cases in the courts of appeal "[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

United States Constitution, Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Fourteenth Amendment

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 1254(1)

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy."

STATEMENT OF THE CASE

The Ogle County Board of Commissioners adopted a Text Amendment that provided that applicants could apply for a special use permit to allow the construction of Wind Energy Conversion Systems ("WECS"). The Findings of Fact and Recommendation supporting the Text Amendment failed to comply with Ogle County's Zoning Ordinance.

On September 16, 2005, Baileyville applied for a special use permit under the Text Amendment. The application for a permit sought the construction of forty (40) WECS, with each WECS being approximately 400 feet in height to the tip of the blade and a rotor diameter of 285 feet (hereinafter the "Application") (CR Tab. 1, p. 143-147).

Muscarello owns agricultural land in Ogle County, and the Application proposes to place 6 WECS surrounding Muscarello's property at the following distances: WECS #1, 1030 feet; WECS #2, 725 feet; WECS #3, 590 feet; WECS #4, 885 feet; WECS #5, 1180 feet; WECS #6, 885 feet. (CR Tab. 1, p. 27-28).

The Zoning Ordinance requires that the application for special use permit be filed upon the form and be accompanied by such information as required by the County. (CR Tab. 1, p. 149-160). The application did not follow the instructions or the Zoning Ordinance for at least 5 separate reasons. (CR Tab. 1, p. 14-15).

On or about October 10, 2005, the County (i) published a Notice of Hearing for the Application (hereinafter the "Published Notice") (CR Tab 1, p. 162) and (ii) caused a notice to be sent to the adjacent property owners ("Owners Notice"). (CR Tab 1, p. 164-166). Neither the Published Notice nor the Owner Notice followed the requirements of 55 ILL. COMP. STAT. 5/5-12009.5 for at least 9 separate reasons. (CR Tab. 1, p. 15-17).

From about November 7, 2005 through December 13, 2005, the County conducted a public hearing on the Application ("Public Hearing"). (CR Tab 1, p. 18). During the Public Hearing, members of the public made at least 6 preliminary motions with regard to their due process and conducting a fair public hearing on the Application. (CR Tab. 1, p. 18). The County either denied or refused to rule upon all such motions. (CR Tab. 1, p. 18). The County failed and refused to provide Muscarello and other constituents with an agenda, lists of witnesses, documents, exhibits and County reports, and otherwise denied the public due process of law. (CR Tab. 1, p. 19). Furthermore, during the Public Hearing, the County refused a request by approximately ten (10) members of the general public to enter written comments before the close of the Public Hearing. (CR Tab. 1, p. 19).

Applicant failed to enter any evidence to support the Application and otherwise satisfy the standards of the Zoning Ordinance on at least seven relevant factors under the Zoning Ordinance and 55 ILL. COMP. STAT. 5/5-12009.5. (CR Tab. 1, p. 19-20). At the Public Hearing, Baileyville entered flawed, misleading, and incomplete evidence, most notably as follows: (i) the opinion that the WECS would not diminish surrounding land values was not an opinion by a licensed appraiser under the Illinois Real Estate Appraisal License Act (225 ILL. COMP. STAT. 458/1-1 et seq.), nor did it comply with the Uniform Standards of Professional Appraisal Practices. (CR Tab. 1, p. 20-23). Baileyville entered other flawed, incomplete, misleading, and contradictory evidence that does not support the fact that Applicant has clearly established that the Application has met the standards as set forth in the Zoning Ordinance. (CR Tab. 1, p. 20-23).

Baileyville testified that the average wake effect of a WECS was 10 times the length of the rotor diameter. (CR Tab. 1, p. 187). A wind engineering specialist for Applicant also testified that the average wake effect and the standard used by the wind industry is 10 times the blade diameter; that if two WECS were placed 880 feet apart (twice the setback required by the Permit) the energy loss as a result of the wake effect would be approximately five percent (5%), and that a five percent (5%) loss of efficiency in a WECS is a significant loss and over time would be a substantial loss of revenue from said WECS. (CR Tab. 1, p. 22). The Applicant entered other misleading and inaccurate information at the Public Hearing as detailed in Plaintiff's Complaint. (CR Tab. 1, p. 20-23).

During the Public Hearings, evidence was entered into the record that a licensed real estate appraiser found there would be a negative impact on values of the surrounding land as a result of the Permit and that impact would be on both residential properties and agricultural land. (CR Tab. 1, p.

23-24). Evidence was also entered that Applicant's noise study did not comply with the Illinois Pollution Control Board regulations; that the Ogle County setback of 440 feet did not comply with requirements of the Illinois Pollution Control Board; and that a setback of 2500 feet (or approximately 10 times the rotor blade diameter) would be more appropriate. (CR Tab. 1, p. 24). Finally, evidence was entered by the public that there are certain health, safety, and environmental concerns with the WECS, including, but not limited to, shadow flicker, wildlife disruption, electromagnetic radiation, radar interference, aerial spray application or crop dusting restrictions, ice and blade throw issues, and a host of other safety issues, which could all affect or impact neighboring and adjacent properties ("Health and Safety Concerns"). (CR Tab. 1, p. 24-26).

On or about December 13, 2005, the County issued Findings of Fact in favor of granting the Application. (CR Tab. 1, p. 191-247). The Findings of Fact on the Application as issued by the County did not contain sufficient findings of facts or evidence, most notably that (i) the proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located, or to the public health, safety, morals, comfort, or general welfare at large, and (ii) it will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the zoning regulations. (CR Tab. 1, p. 26-27).

On or about December 20, 2005, the County authorized and issued the Permit. (CR Tab. 1, p.

249-251). The Permit requires a setback of only 440 feet (1.1 times the WECS' height) to the neighboring or adjacent property under the Zoning Ordinance. The Permit, as enacted by the County, does not comply with 55 ILL. COMP. STAT. 5/5-12009.5(c), since the Special Use Permit contains a condition for Payment in Lieu of Taxes, and said condition is not reasonable and necessary to meet the standards of the Zoning Ordinance. (CR Tab. 1, p. 28-29). The Applicants failed to clearly establish that the Application met the standards established by the Zoning Ordinance or 55 ILL. COMPo STAT. 5/5-12009.5 (CR Tab. 1, p. 28-29). By granting the Permit, Ogle County, by ordinance, enacted a private inverse taking for the financial benefit of the Applicant and Adjacent Owners of the expense and disadvantage to Muscarello, her property values and property rights. (CR Tab. 1, p. 41-42).

On January 19, 2006, Plaintiff Patricia Muscarello brought this lawsuit after Defendants Ogle County Zoning Board of Appeals and Board of Commissioners granted a special use permit on December 20, 2005, to Defendant Baileyville Wind Farms, LLC for the construction of a wind farm consisting of 40 wind turbines, of which six wind turbines were located immediately surrounding and adjacent to Plaintiff's property. Baileyville is a subsidiary of Defendant Navitas Energy, Inc., which is a subsidiary of Defendant Gamesa Corporacion Tecnologica, S.A.

Counts IV (Taking), VI (Due Process) and VIII (Equal Protection) of Petitioner-Plaintiff-Appellant Patricia Muscarello's First Amended Complaint at

Law and Equity alleged subject matter jurisdiction based on a federal question. On February 6, 2007, the United States District Court for the Northern District of Illinois, Western Division dismissed Counts IV and VIII for lack of ripeness, and Count VI for failure to state a claim, because Plaintiff had no protected property interest, and, even if there were, state law could adequately address its loss. Plaintiff did not replead Counts IV, VI or VIII in her Second Amended Complaint at Law and Equity, nor plead any Counts numbered IV, VI or VIII in the Second Amended Complaint.

Plaintiff filed her Second Amended Complaint to correct allegations concerning diversity jurisdiction. Plaintiff's Second Amended Complaint alleged diversity and alienage jurisdiction as to Counts X (Trespass) and XI (Public Nuisance), and supplemental jurisdiction as to Counts I (Declaratory Judgment), II (Administrative Review), III (Writ of Certiorari), V (Taking Under Illinois Law), VII (Due Process Under Illinois Law), IX (Equal Protection Under Illinois Law) and XII (Injunction).

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The United States Court of Appeals for the Seventh Circuit affirmed the judgment of the United States District Court for the Northern District of Illinois, Western Division in *Muscarello v. Ogle County Board of Commissioners*, Nos. 03-2464 and 09-1381, by a judgment, entered June 24, 2010, which dismissed all of Plaintiff's claims.

On July 7, 2010, Petitioner filed Appellant's Motion to Extend Time to File Petition for Rehearing, Appellant's Motion for Substitution of Attorneys and Appellant's Motion for Leave to File Third Amended Complaint in Law and Equity Pursuant to 28 U.S.C. § 1653. On July 8, 2010, Petitioner filed her Corrected Motion for Leave to File Third Amended Complaint in Law and Equity Pursuant to 28 U.S.C. § 1653, and Plaintiff-Appellant Patricia Muscarello's Petition for Rehearing Pending Ruling on Motion for Extension of Time. The Court of Appeals granted Appellant's Motion to Extend Time to File Petition for Rehearing, and Appellant's Motion for Substitution of Attorneys, and extended the time for Petitioner to file its petition for rehearing until July 22, 2010.

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Petitioner filed her Petition for Rehearing on July 22, 2010, and the Court of Appeals denied the Petition for Rehearing on August 17, 2010.

The basis for jurisdiction is 28 U.S.C. §1254(1), which allows review by the Supreme Court of cases in the courts of appeal "[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

ARGUMENT

I. The Seventh Circuit Court of Appeals Decision Conflicts with Supreme Court and Other Circuit Court Cases Which Hold that a Facial Challenge to Legislative Action Is Ripe.

A regulatory taking claim challenging legislative action on its face is ripe. *San Remo Hotel, L.P. v. City & County of San Francisco,* 545 U.S. 323, 345-46, 125 S.Ct. 2491, 162 L.Ed.2d 315 (2005); *Yee v. Escondido*, 503 U.S. 519, 534, 112 S.Ct. 1522 (1992); *Muscarello v. Ogle County Board of Commissioners*, 610 F.3d 416, 422 (7th Cir. June 24, 2010); *County Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 165 (3rd Cir. 2006). Yet the United States Court of Appeals for the Seventh Circuit affirmed the dismissal under Rule 12(b) of the Federal Rules of Civil Procedure of Plaintiff's regulatory taking claims challenging the issuance of a special use permit authorizing a windmill on the basis that it was unripe, because the Court held it was not a facial challenge, but rather characterized it as an as-applied challenge. (Counts IV, VI and VIII of Plaintiff's First Amended Complaint). *Muscarello,* 610 F.3d at 422-23.

The United States Supreme Court defined the allegations necessary for a taking in *Agins v. City of Tiburon,* 447 U.S. 255, 260, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980).

"[T]he only question properly before us is whether the mere enactment of the zoning ordinances constitutes a taking.

"The application of a general zoning law to particular property effects a taking if the ordinance ... denies an owner economically viable use of his land, see *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 138, n. 36 (1978)." *Agins v. City of Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980).[1]

Despite the continued viability of this standard and despite the *San Remo* and *Yee* cases which allow a facial taking claim to be raised in federal court without pursuing a takings claim in state court, the Court of Appeals determined that Plaintiff did not state a claim for a facial challenge because her pleadings "focused on the economic deprivation that she herself will suffer if and when the taking occurs — the characteristic "as applied" challenge." *Muscarello v. Ogle County Board of Commissioners*, 610 F.3d 416, 422 (7th Cir. 2010).

The Court of Appeals decision is incorrect, and it conflicts with the decisions of this Court, and the decisions of other Circuits concerning an important issue. First, nothing in any decision of the United States Supreme Court supports the false dichotomy the *Muscarello* Court draws between economic harm or deprivation to the plaintiff and denial of economically viable use. *Id.* The *Muscarello* Court cites nothing in support of this false distinction.

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[1] Although this Court has rejected takings claims based on failure to "substantially advance legitimate state interests," it has preserved facial challenges based on the denial of economically viable use of land. *Lingle v. Chevron U. S. A.*., 544 U.S. 528, 548, 125 S.Ct. 2074 (2005).

In *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 479,107 S.Ct. 1232 (1987), this Court analyzed a facial challenge to legislation. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 479,107 S.Ct. 1232 (1987). The Court referred to **both** the denial of economically viable use test and the interference with investment backed expectations test, derived from *Penn Central Transportation. Co. v. New York City*, 438 U.S. 104, 124, 98 S.Ct. 2646 (1978). *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 499,107 S.Ct. 1232 (1987), quoting *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 295-96,101 S.Ct. 2352 (1981); *Penn Central Transportation. Co. v. New York City*, 438 U.S. 104, 124, 98 S.Ct. 2646 (1978). Obviously, therefore, pleading economic harm or deprivation to the plaintiff does not preclude a facial challenge.

Other circuit courts of appeal have also not separated economic harm or deprivation to the plaintiff and denial of economically viable use. The Ninth Circuit, in *Guggenheim v. City of Goleta*, 582 F.3d 996, 1015-16 (9th Cir. 2009), held that a plaintiff could assert a facial challenge, based not only on denial of economically viable use, but on the factors listed in *Penn Central Transportation. Co. v. New York City*, 438 U.S. 104, 124, 98 S.Ct. 2646 (1978). One of those factors is "the extent to which the regulation has interfered with distinct investment-backed expectations." *Penn Central Transportation. Co.*, 438 U.S. at 124. Since interference with investment-backed expectations is an economic harm or deprivation, the Ninth Circuit's conclusion that a facial claim can be based on the *Penn Central* factors recognizes that pleading economic harm or deprivation to the individual does not defeat a facial claim. *Guggenheim*, 582 F.3d 996, 1015-16.

Pleading economic harm or deprivation and pleading denial of economically viable use are not mutually exclusive. *Guggenheim*, 582 F.3d 996, 1015-16. Economic harm or deprivation to the plaintiff is simply an additional fact, and economic harm or deprivation can result from denial of economically viable use, or can be part of the factual allegations supporting an allegation of denial of economically viable use. (First Amended Complaint, Counts IV, V, VIII).

The *Muscarello* Court also failed to recognize that Patricia Muscarello has not simply pleaded or focused on her economic harm or deprivation, she has also pleaded that she suffered other harms. Ms. Muscarello lists fifteen effects in Counts IV, ¶ 95 of the First Amended Complaint. (First Amended Complaint, ¶ 95). Shadow flicker, severe noise, radar interference, lightning damage and electromagnetic radiation concern health. (First Amended Complaint, Count IV, ¶ 95 (iii, iv, vi, xi, xii)). "Ice throw," "blade throw," radar interference, lightning damage, electromagnetic radiation and stray voltage concern safety. (First Amended Complaint, Count IV, ¶ 95 (v-vi, xi, xii and xiii). Radar interference, cell phone interference, GPS interference, wireless communication interference, and television interference concern comfort. (First Amended Complaint, Count IV, ¶ 95 (vi, vii, viii, ix, xi, and x). The vast majority of the effects alleged therefore raise health, safety and comfort issues. (First Amended Complaint, ¶ 104(ii - xiii)).

The Court's conclusion that Muscarello focused on her "economic deprivation" also ignores the fact that she did not seek compensation in the prayer for relief to any of her counts (First Amended Complaint, Counts IV, VI and VIII; Second Amended Complaint, Counts I, II, III, V, VII, IX, XII), except common law trespass and nuisance (Second Amended Complaint, Counts X and XI). Instead, she sought to overturn the permit granted, and have it held "invalid, illegal, unconstitutional, and void" (First Amended Complaint, Counts IV, VI, VIII) and similar relief in other counts. (Second Amended Complaint, Counts I, II, III, XII).

The Seventh Circuit Court of Appeals therefore incorrectly denied Petitioner the right to pursue her takings claim (Count IV, First Amended Complaint), based on its determination that Petitioner had not pleaded a facial challenge because she alleged her own economic harm and deprivation, contrary to the decisions of the United States Supreme Court and other Circuit Courts of Appeal, which have recognized that a plaintiff who pleads economic harm or deprivation can still state a facial challenge to legislation.

Respectfully submitted,

PATRICIA A. MUSCARELLO
Petitioner

BY: Oliver Close, LLC

BY: John Rearden Jr.
John Rearden, Jr.

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APPENDIX

United States District Court, Northern District of

Illinois

Name of Assigned Judge Philip G. Reinhard

CASE NUMBER 06C50017 DATE 2/6/2007

CASE TITLE Muscarello vs. Ogle County Board of

Commissioners, et al.

Docket Entry Text:

For the reasons stated below, defendants' motions to dismiss are granted. Counts IV and VIII of the complaint and cross-claims are dismissed for lack of subject matter jurisdiction because they are not ripe. Each Count VI is dismissed for failure to state a federal claim because no protected property interest is at stake and, even assuming there were, state law provides adequate due process. The court declines to exercise supplemental jurisdiction over the state law claims. Diversity of citizenship does not provide a basis for subject matter jurisdiction because the citizenship of all parties has not been properly pleaded. Plaintiff is granted 30 days to file amended jurisdictional allegations to support diversity of citizenship jurisdiction. s/Philip G. Reinhard
[For further details see text below.]
Notices mailed by Judicial staff.
STATEMENT

Plaintiff, Patricia A. Muscarello filed her complaint against defendants, Ogle County Board of Commissioners ("County"), Betty Goeken (chairman of the Ogle County Board of Commissioners), Ogle County Zoning Board of Appeals ("ZBA"), Bruce McKinney (Chairman of the Zoning Board of Appeals), Michael Reibel (Planning and Zoning Administrator)1, Baileyville Wind Farms, LLC ("Baileyville")2, Navitas Energy, Inc. ("Navitas"), Gamesa Corporation Tecnologica, S.A. ("Gamesa"), Ralph and Shirley Coffman, Eunice Miller Trust, Lyle Hundertmark, Mark Hundertmark, Jodie Hundertmark, Leigh Hollewell, Gary Hollewell, Doris Hollewell, Robert G. Borneman, Steven Lundgren, John Danis, Chris Fillips, Julie Mennanga, Joyce and Randall Steinbeck, Steve Leek, Mary Rose Krupa, Rick Lott, Harvey Bolen, Rebecca Shurtleff, Joshua Bolen, Jim Huff, Debbie Steinbach, Garrett Leek, Brent Bach, Dan Buskohl, Joe Kerwin, Paul Eberth, George J. Sterzinger, Christopher Nuckols, Todd Weegens, Barry Klinger, Thomas E. Hewson, Jr., Michael McCann, Randy Pals, Ron Kern, Jack Theden, Eldred Rogers, Jose Calvo, Dennis Craddock, and Elmer Rhodes.3 The case arises from the grant to Baileyville of a special use permit allowing a wind energy conversion system ("WECS") to be constructed on certain real estate in Ogle County. Count I seeks a declaratory judgment against County, Goeken, ZBA, McKinney, Baileyville, Navitas, and Gamesa for violations of county ordinance and state law. Count II is for administrative review pursuant to state law against County, Goeken, ZBA, McKinney and parties ofrecord in the matter sought to be reviewed. Count III (plead in the alternative to Counts I and II) is for writ of certiorari under state law against, County, Goeken, ZBA, and McKinney. Count IV claims an unlawful taking in violation of Section 1 of the Fourteenth Amendment to the U.S. Constitution against County and ZBA. Count V claims a taking in violation of Sections 2 and 15 of Article lof the illinois Constitution against County and ZBA. Count VI claims a denial of due process in violation of Section 1 of the Fourteenth Amendment of the U.S. Constitution against County and ZBA. Count VII alleges a denial of due process in violation of Section 2 of Article I of the illinois Constitution against County and ZBA. Count VIII claims a denial of equal protection under the Fourteenth Amendment ofthe U.S. Constitution against County and ZBA. Count IX alleges a denial of equal protection in violation of Section 2 of Article I of the illinois Constitution against County, ZBA, Baileyville, Navitas and Gamesa. Count IX also claims a state constitution equal protection violation against Ralph and Shirley Coffman, Eunice Miller Trust, Lyle Hundertmark, Mark Hundertmark, Jodie Hundertmark, Leigh Hollewell, Gary Hollewell, Doris Hollewell, Robert G. Borneman (collectively, "Adjacent Owners"). Count X is a state law trespass claim against County, ZBA and Adjacent Owners. Count XI is a state law public nuisance claim against County, ZBA and Adjacent Owners. Count XII seeks an injunction against County, ZBA, and Adjacent Owners. Federal question jurisdiction is alleged pursuant to 28 U.S.C. § 1331 based on the federal constitutional claims and supplemental jurisdiction is alleged over the state law claims. 28 V.S.C. § 1367 (a). Plaintiff also claims diversity of citizenship jurisdiction 28 V.S.C. § 1332 (a), but the complaint does not properly allege citizenship of the various parties, see *Meverson v. Harrah's East Chicago Casino*, 299 F .3d 616, 617 (7th Cir. 2002), so diversity of citizenship is not a proper basis for federal subject matter jurisdiction.4

Cross-plaintiffs, Steven Lundgren, John Danis, Steven E. Leek, Nancy J. Leek, Elizabeth Fillip, individually and as trustee of the Elizabeth Fillip Revocable Trust, U/T/A dated 9/6/89 and as a partner of Fillip Farms Limited Partnership, Christ Fillip, Jr. individually and as a partner of Fillip Farms Limited Partnership, filed a twelve-count cross-claim mirroring the same claims in the same numbered counts as plaintiff's complaint except that no cross-claim is directed against the Adjacent Owners.

The Ogle Defendants move to dismiss both the complaint and the cross-claim pursuant to Fed. R. Civ. P. 12 (b) (1) for lack of subject jurisdiction, specifically arguing that the federal claims are not ripe for adjudication. The Baileyville Defendants move to dismiss the complaint for lack of subject matter jurisdiction. They are not state actors and none of the federal claims are brought against them. They argue supplemental jurisdiction does not reach them because supplemental jurisdiction cannot be used to have a federal court review a state agency administrative decision where state law assigns that review to the state courts.

In November, 2003, Ogle County amended its zoning ordinance to allow as a special use a "Wind Energy Conversion System, Commercial", in an AG-1 Agricultural District (as well as in certain other districts.) Plaintiff and crossplaintiffs allege the adoption of this ordinance ("Windmill Text Amendment") was not in accordance with the Ogle County zoning ordinance in that the findings of fact were inadequate under said ordinance. In September, 2005, Baileyville applied for a special use permit to allow the installation of a WECS on property ("Baileyville Property") zoned AG-1. Plaintiff and cross-plaintiffs maintain numerous violations of the Ogle zoning ordinance and Illinois state law occurred during the process which ultimately ended with the granting of the special use permit.

The court must first determine whether it has subject matter jurisdiction over this action. Plaintiff's complaint alleges three federal claims, all purported violations of section 1 of the Fourteenth Amendment to the V.S. Constitution: 1) a taking without just compensation (Count IV); 2) a denial of due process (Count VI); and 3) a denial of equal protection (Count VIII). These claims are based on the grant by Ogle County of a special use permit to Baileyville to allow construction of a wind energy conversion system on real estate adjacent to plaintiff's real estate and the adoption, in conjunction with the grant, of a Home Sellers Property Value Protection Plan, which provides benefits to residential property owners within one mile of the WECS but denies any such benefits to owners of non-residential properties. Plaintiff's property was not taken as a site for construction of the WECS. She claims that the grant of the special use permit by ordinance on property adjacent to hers has "unreasonably and illegally taken, injured and damaged" plaintiff's property. The cross-claim makes essentially the same claims.

The Ogle Defendants argue the court lacks subject matter jurisdiction over these claims because, under the criteria set forth in *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the claims are not ripe for adjudication. These criteria are articulated in *Behavioral Institute of Indiana, LLC v. Hobart City of Common Council*, 406 F .3d 926, 930 (7th Cir. 2005), in which the court states "federal courts do not have subject matter jurisdiction over a takings claim unless the property owner has (1) obtained a final decision from the relevant governmental entity regarding the application of the land use regulations at issue to the property in question, and (2) sought compensation for the taking through the procedures the state has provided for obtaining such compensation, e.g. inverse condemnation." These criteria apply to procedural and substantive due process claims as well when based on the same facts as a takings claim. Id. at 931.

The Ogle Defendants concede that the final decision prong has been satisfied by the issuance of a special use permit. They claim plaintiff and cross-plaintiffs fail to meet the second prong because they have not exhausted state remedies for compensation. Plaintiff and cross-plaintiffs have not pursued compensation for the alleged taking in state court. They argue that they are making a pre-enforcement facial challenge to the special use permit and are not seeking compensation or damages for the alleged taking. Since they are only asking that the special use permit be declared "invalid, illegal, unconstitutional and void", they say they are not subject to the Williamson ripeness requirement of seeking compensation through the state courts first. They rely on footnote 13 in *Daniels v. Area Planning Comm'n of Allen County*, 306 F. 3d 445, 458 (7'h Cir. 2002) ("Litigants are not required to meet the Williamson County ripeness requirements when solely mounting a pre-enforcement facial challenge to the constitutionality of a statute under the Fifth Amendment.") The Daniels footnote relies on *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992). In Yee, petitioners, mobile home park owners, challenged a city ordinance barring mobile home park owners from raising rent for pads in their parks without city council approval. The Supreme Court characterized petitioners claim as alleging the ordinance did not advance a legitimate state interest no matter how it was applied and stated "[a]s this allegation does not depend on the extent to which petitioners are deprived of economic use of their particular pieces of property or the extent to which these particular petitioners are compensated, petitioners' facial challenge is ripe." Id. at 534.

In contrast, plaintiff's and cross-plaintiffs' claims depend entirely upon the extent to which they are deprived of economic use of their particular property. Their allegations go to numerous specific detrimental impacts the WECS will have on their specific property. They have not cited any case in which a ordinance granting a special use permit has been challenged by proximate landowners and found to be a facial challenge exempt from the Williamson requirements. It seems unlikely the Supreme Court would extend *Yee* to something as factually specific as a challenge to the granting of a special use permit for a specific project on a specific parcel ofland after a hearing by the local government issuing the special use permit. To the extent plaintiff and cross-plaintiffs are actually advancing a takings claim, they must first proceed under the state's procedures for determining their right to compensation before coming to this court. No federal takings claim is ripe for adjudication in this court. Plaintiff and cross-plaintiffs assert (in their Count VIs) that they have been deprived of property without due process in violation of the U. S. Constitution. Paragraph 93 of the complaint states: "In denying the Plaintiff and other members of the public their rights to due process during the Public Hearing and with the issuance of the Special Use Permit, the Zoning Board of Appeals and the Ogle County Board of Commissioners have violated Section 1 of the Fourteenth Amendment to the Constitution of the United States." Paragraph 60 of the cross-claim makes essentially the same allegation. The Ogle Defendants argue the due process claims are actually disguised takings claims which must be dismissed as not ripe under Williamson.

The Fourteenth Amendment prohibits a state from depriving a person of life, liberty, or property without due process oflaw. "The references to 'property' in the Constitution reflect its Lockean heritage. The founding generation viewed 'property' in concrete terms-land and chattels acquired by the investment of effort or purchase from another. An owner may build on its land; that is an ordinary element of a property interest. Zoning classifications are not the measure of the property interest but are legal restrictions on the use of property." *River Park, Inc. v. City of Highland Park*, 23 F.3d 164, 166 (7th Cir. 1994) (emphasis in original). "Those things people can hold or do without the government's aid count as property or liberty no matter what criteria the law provides." Id. Restricting another landowner's use of its property is not something "people can hold or do without the government's aid." Plaintiffs and cross-plaintiffs claim is that the land to be used for the WECS previously was subject to zoning restrictions that prohibited the WECS construction. The county then amended its zoning ordinance to allow a WECS to be constructed in an AG-1 zoning district if a special use permit was obtained and then, sometime later, granted a special use permit for the construction of this particular WECS. They claim numerous errors in the process leading to the granting of the special use permit. However, the result of the process was simply the freeing of the Baileyville Property from a prior government-imposed restriction. This did not deprive plaintiff and cross-plaintiffs of their property any more than the governor pardoning their neighbor and releasing him from prison would deprive them of their liberty because the neighbor was a likely threat to them. It may have been a bad idea and it may have terrible consequences but the remedy is not found in the U.S. Constitution.

Even assuming plaintiff and cross-plaintiffs, have a property interest at stake5, Illinois provides ample opportunity to vindicate those interests. Plaintiff and cross-plaintiffs contend the actions are reviewable by declaratory judgment action, common law writ of certiorari, or alternatively under the Illinois Administrative Review Law 735 ILCS 5/3-101, *et seq.* The availability of the writ of certiorari or administrative review in the Illinois courts is adequate process. See *River Park, Inc.*, 23 F .3d at 167. Because, the state supplies adequate process by these means, no federal claim for a denial of due process exists.

The third asserted federal claim is for an equal protection violation. Plaintiff and cross-plaintiffs assert that the adoption of the Home Sellers Property Value Protection Plan, which provides benefits to residential property owners within one mile of the WECS but denies any such benefits to owners of non-residential properties, is an unconstitutional denial of equal protection. The Home Sellers Property Value Protection Plan is, as described by plaintiff, a plan in which Baileyville agreed to pay the seller of residential property the difference between the price the seller received and the fair market value of the property sold or to purchase such a property at fair market value if it did not sell within 150 days of being placed on the market. Plaintiffs and cross-plaintiffs own agricultural land without residences. The Ogle

Defendants contend this equal protection claim is a disguised takings claim which is not ripe under *Williamson*.

To establish an equal protection claim in the land-use context, plaintiff must show the government's action is "wholly impossible to relate to legitimate governmental objectives. This standard is satisfied when the equal protection claim [is] based on: (1) the malicious conduct of a governmental agent, in other words, conduct that evidences a spiteful effort to 'get' him for reasons wholly unrelated to any legitimate state objective; or (2) circumstances, such as a prayer for equitable relief and a claim [that] would evaporate if the [governmental body] treated everyone equally, that sufficiently suggest that the plaintiff has not raised just a single takings claim with different disguises." *Patel v. City of Chicago*, 383 F.3d 569, 573 (7h Cir. 2004) (internal quotation marks and citations omitted.) There is no claim of malicious conduct. Rather, plaintiff and cross-plaintiffs rely on the second prong. They contend that invalidating the Home Sellers Protection Plan would result in everyone being treated equally.

The Home Sellers Protection Plan is a means of assuring sellers ofresidential property that if they attempt to sell they will get the fair market value unaffected by the existence of the WECS. Plaintiff and cross-plaintiffs have not sought compensation through available state procedures to compensate them for any loss to fair market value occasioned by the zoning change to the Baileyville Property. Their only complaint about the Home Sellers Protection

Plan is that residential owners are getting something they are not: compensation for loss of fair market value. Plaintiff and cross-plaintiffs have not taken the necessary actions in state court to seek compensation for loss in fair market value. This is a disguised takings claim and is not ripe under *Williamson*.

For the foregoing reasons, defendants motions to dismiss are granted. Counts IV and VIII of the complaint and cross-claims are dismissed for lack of subject matter jurisdiction because they are not ripe. Each Count VI is dismissed for failure to state a federal claim because no protected property interest is at stake and, even assuming there were, state law provides adequate due process. The court declines to exercise supplemental jurisdiction over the state law claims. Diversity of citizenship does not provide a basis for subject matter jurisdiction because the citizenship of all parties has not been properly pleaded. Plaintiff is granted 30 days to file amended jurisdictional allegations to support diversity of citizenship jurisdiction. Diversity seems problematic beyond the *Meyerson* issue, not only is there the question of plaintiff s Arizona citizenship but also there is an issue on the alignment of her husband as a defendant, rather than as a plaintiff and the impact his citizenship would play.

1. County, Goeken, ZBA, McKinney and Reibel filed joint motions to dismiss the complaint and the cross-claim and will be referred to as "Ogle Defendants."

2. Baileyville, Navitas, Gamesa, Ralph and Shirley

Coffman, Eunice Miller Trust, Lyle Hundertmark, Mark and Jodie Hundertmark, Leigh, Gary, and Doris Hollewell, Robert G. Borneman, Paul Eberth, George J. Sterzinger, Christopher Nuckols, Todd Weegens, Barry Klinger, Randy Pals, Eldred Rogers, Jose Calvo, Dennis Craddock, and Elmer Rhodes filed joint motions to dismiss the complaint and the cross-claim and will be referred to as "Baileyville Defendants."

3. Buskohl has been dismissed as a defendant by agreed order. Mennanga, the Steinbecks, Krupa, Lott, Harvey Bolen, Joshua Bolen, Huff, Steinbach, Bach, Kerwin, Hewson, McCann, and Theden have all been dismissed as parties under Count II.

4. Plaintiff argues diversity of citizenship jurisdiction is present under 28 U .S.C. § 1332 (a) (2) because plaintiff is domiciled in Arizona and Gamesa is a citizen of Spain. However, it is § 1332 (a) (3) (actions between citizens of different states in which citizens of a foreign state are additional parties) that controls, and the citizenship of numerous defendants has not been properly pleaded under *Myerson*. [sic]

5. *Klaeren v. Village of Lisle*, 781 N .E.2d 223, 234 (Ill. 2002), holds statutory objectors to special use petitions in Illinois "must be afforded the due process rights normally granted to individuals whose property rights are at stake."

United States District Court, Northern District of Illinois

Name of Assigned Judge Frederick 1. Kapala

CASE NUMBER 06C50017 DATE 5/16/2008

CASE TITLE Muscarello vs. Ogle County Board of Commissioners, et al.

Docket Entry Text:

Defendants motions to dismiss [135] [141] are granted. This case is closed. s/Frederick J. Kapala

[For further details see text below.] Docketing to mail notices.

STATEMENT

Currently before the court are two motions to dismiss plaintiffs second amended complaint for lack of subj ect matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1). This is the third time plaintiffs complaint, which challenges the decision of the Ogle County Board of Commissioners to grant a special use permit to allow the construction of a Wind Energy Conversion System on property adjacent to plaintiffs land, has been before the court on a jurisdictional review.

Plaintiffs original 12-count complaint contained three claims predicated on federal question jurisdiction; diversity and supplemental jurisdiction were alleged for the remaining claims. This court dismissed the original complaint for lack of subject matter jurisdiction, finding that the federal claims were not ripe and that diversity had not been properly pled. The court granted plaintiff 30 days to file amended jurisdictional allegations to support diversity of citizenship.

Plaintiffs first amended complaint also was dismissed for lack of subject matter jurisdiction. Plaintiff erroneously re-pled her federal claims, which previously had been dismissed, and failed to properly allege the citizenship of one of the defendants. Plaintiff again was given 30 days to file amended jurisdictional allegations.

In her second amended complaint, which currently is before the court, plaintiff has properly alleged the citizenship of all defendants, and claims that this court has diversity jurisdiction over her complaint based on Count X, alleging trespass, and Count XI, alleging a public nuisance.1 Although defendants claim in their motions that complete diversity is lacking because plaintiffs husband is named as a defendant, the court need not reach this issue. Even if complete diversity exists, as plaintiff alleges, this court still lacks subject matter jurisdiction over the complaint because plaintiffs claims for trespass and nuisance are not yet ripe, and therefore, no case or controversy exists. See *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227,239 (1937) (stating that the Constitution limits the exercise of judicial power to actual cases and controversies). It is clear from the allegations in plaintiffs complaint that the proposed windmill farm has yet to be constructed. Plaintiff alleges that, once the windmills are installed, there will be trespasses upon her property and the windmills will cause various nuisances on her property. She also alleges that the proposed construction will cause an unreasonable diminution of the value or her property such that she will suffer damages in excess of $75,000. The problem for plaintiff, of course, is that none of this has happened yet, and although certain defendants have obtained a special use permit to allow the construction of a windmill farm, there is no guarantee that this will occur, and thus, no guarantee that plaintiff will be injured in the manner alleged.

Accordingly, plaintiffs claims in Counts X and XI, which are the only claims premised on diversity jurisdiction, are dismissed for lack of subject matter jurisdiction. Because the court does not have original jurisdiction over this action, the remaining state-law claims also must be dismissed. See 28 U.S.C. § 1367; see also *State of Ill. v. City of Chi.*, 137 F.3d 474, 478-79 (7th Cir. 1998) ("[A] court is not free to decide the merits when there is no justiciable controversy. Subject-matter jurisdiction is the first question in every case, and if the court concludes that it lacks jurisdiction it must proceed no further."). Plaintiff is free to raise these state-law claims in the appropriate state forum is [sic] she chooses. Defendants motions to dismiss are granted, and this case is closed.

1. Although Count XI is titled, "Public Nuisance," plaintiff claims that she actually intended to bring a

claim for private nuisance. For purposes of this order, the court will assume that Count XI's title was merely an error and treat the claim as one for private nuisance.

2. Plaintiff asserts that the granting of a special use permit has created a "constructive easement" on her property, such that she already has been injured. Plaintiff cites no legal authority for this theory, and the court has been unable to find any. As such, this argument is rejected. Moreover, this theory makes plaintiffs claims in Counts X and XI perilously close to being a disguised takings claim, which would not be ripe for the reasons discussed in this court's order dismissing plaintiff's original complaint.

In the
United States Court of Appeals
For the Seventh Circuit

Nos. 08-2464, 09-1381.

PATRICIA A. MUSCARELLO,
Plaintiff-Appellant, Cross-Appellee,
v.
OGLE COUNTY BOARD OF COMMISSIONERS, et al.,
Defendants-Appellees,
and
BAILEYVILLE WIND FARMS, LLC, et al.,
Defendants-Appellees,Cross-Appellants.

Appeals from the United States District Court
for the Northern District of Illinois, Western Division

No. 06 C 50017 – Frederick J. Kapala, Judge

Argued October 6, 2009 – Decided June 24, 2010.

Before BAUER, WOOD, and WILLIAMS, Circuit Judges.

WOOD, Circuit Judge. Ogle County joined the alternative energy bandwagon in 2003 when it adopted an amendment to its zoning ordinances to allow special use permits for the construction of windmills used to generate power. In 2005, Baileyville Wind Farms, LLC ("Baileyville") took the county up on its offer by applying for and receiving a special use permit to construct 40 windmills.

Patricia Muscarello evidently did not share the county's enthusiasm for wind energy. Muscarello owns land adjacent to the proposed site of the Baileyville wind farm. She voiced her opposition through the political process and, when that failed, she repaired to federal court. At that point, this garden variety zoning dispute morphed into a federal case against 42 defendants, including Baileyville, its corporate parents, and the various Ogle County political actors involved in the decision to grant the permit. Muscarello's complaint invoked twelve theories of recovery, based on the U.S. Constitution, the Illinois Constitution, Illinois statutes, and the common law. In addition to objecting to the process that the county had followed, she attacked everything in the outcome (or anticipated outcome) from the loss of kinetic energy, to what she calls "shadow flicker," to the risk of a blade being hurled onto her property.

The district court concluded that it could not reach the merits of her suit. Instead, it held that the federal court was not the proper forum in which her claims could be resolved. We agree. Baileyville and its corporate parents have cross-appealed from the district courts refusal to impose a stay of administrative proceedings (that might or might not have been commenced at the time the court ruled) in Ogle County. Finding no abuse of discretion in that ruling, we affirm it also.

I

We rely primarily on Muscarello's first and second amended complaints for this account of the pertinent facts, although we have added some undisputed material from the remainder of the record where necessary.

In late 2003, after a public hearing held by the Zoning Board of Appeals (the "ZBA"), the Ogle County Board of Commissioners (the "Board") adopted an amendment to the county zoning ordinances providing that special use permits would be available for systems that use wind energy and thereby reduce dependence on fossil fuels (the "Windmill Text Amendment").

In September 2005, Baileyville applied for a special use permit to build a wind-energy system on land in Ogle County adjacent to Patricia Muscarello's property. (Two other Muscarellos are involved in this case: Patricia Muscarello was represented by her son, Charles Muscarello, and she sued, among others, her husband, Marco Muscarello. For simplicity we refer to Patricia Muscarello as "Muscarello" and, where necessary, we refer to her husband as "Marco Muscarello.") Baileyville intended to construct 40 windmills, each of which was to be approximately 400 feet in height to the tip of the blade and 285 feet in diameter. The application specified the locations of the windmills on the property.

Some time between November 7 and December 13, 2005, the ZBA held public hearings on Baileyvilles application. On December 13, the ZBA issued its Findings of Fact in support of the application. On December 20, the Board issued the special use permit and adopted a Home Sellers Property Value Protection Plan (the "Protection Plan") to provide a mechanism for residential property owners to recover any diminution of value that resulted from the windmills if and when they decided to sell their homes. Nonresidential property owners were not eligible to take advantage of this procedure.

Muscarello objects to every stage of the process. On January 19, 2006, she filed her original complaint, in which she objected to the findings of fact for the Windmill Text Amendment, the Baileyville permit application, the notice for the public hearing, the public hearing itself, Baileyvilles evidence at the hearing, the findings of fact for the special use permit, the decision to issue the permit, and the authorization of the Protection Plan. At the core of her substantive allegations is an assertion that the county has condoned an impermissible taking of her property. Muscarello presented a laundry list of charges in her first amended complaint; as she describes it, the issuance alone of the permit will harm her in numerous ways:

> (i) she will be deprived of the full extent of the kinetic energy of the wind and air as it enters her property.
>
> (ii) she will be deprived of the full extent of the Accessory Use under Division 5, Section 5.01(N) of the Zoning Ordinance.
>
> (iii) her property will be subject to "shadow flicker" and reduction of light caused by the Wind Energy Conservation System.
>
> (iv) she will have to endure severe noise caused by the Wind Energy Conservation System.
>
> (v) ice may be physically thrown onto her

> property by the rotating blades.
> [vi] there is risk of what she calls "blade throw," meaning that she fears that the rotor blades may come loose and be thrown onto her property.
> [vii] the windmills will cause radar interference on her property.
> [viii] the windmills will interfere with the reception on her cell phone network.
> [ix] the windmills will disturb her GPS service.
> [x] her property will be subject to wireless communication interference.
> [xi] the system will interfere with her television signals.
> [xii] the existence of the windmills will enhance her risk of sustaining damage from lightening.
> [xiii] she will be exposed to higher levels of electromagnetic radiation.
> [xiv] she will suffer injury from stray voltage; and
> [xv] the windmills will prevent her from conducting crop-dusting operations on her fields.

We glean from all this, taking it in the light most favorable to Muscarello, that she believes that the prescribed process was not followed and that the construction of windmills will have uncompensated adverse consequences for her and her fellow nonresidential property owners. Muscarello sued to stop the construction of the windmills and to require the Board to revoke the permit. To date, as far as the record before us reflects, no windmills have been constructed.

II

Muscarello's complaint includes 12 counts based on the U.S. Constitution, the Illinois Constitution, Illinois statutes, and Illinois common-law rights; as we noted earlier, it names 42 defendants. For purposes of this appeal, we can group the defendants as follows: various entities and individuals acting on behalf of Ogle County ("Ogle County"); the parties of record in the administrative proceeding, including Marco Muscarello, plaintiffs husband; Baileyville, the permit-holder; Navitas Energy, Inc., sole shareholder, member, and owner of Baileyville; and Gamesa Corporacion Tecnologia, S.A., the corporate parent of Navitas. Baileyville, Navitas, and Gamesa have cross-appealed.

We divide our analysis of Muscarello's claims into three categories based on the type of jurisdiction pleaded: (1) section 1331 claims; (2) section 1332 claims; and (3) section 1367 claims. We discuss the applicable jurisdictional bases for each theory of recovery along with our discussion of the merits below. Here, we briefly summarize Muscarello's claims and the district courts disposition of them.

1. Section 1331 Claims. Muscarello alleges three violations of the Fourteenth Amendment of the U.S. Constitution: Count IV alleges a taking without just compensation; Count VI alleges a denial of due process; and Count VIII alleges a denial of equal protection. These counts stem from Ogle Countys grant of the special use permit to Baileyville and the adoption of the Protection Plan that provides

compensation only to residential property owners. Although the permit does not directly affect Muscarello's land, she asserts that it represents an unreasonable and illegal taking of her property, that the process by which it was awarded was defective, and that the Protection Plan unlawfully discriminates against nonresidential property owners. The district court dismissed her takings and equal protection claims as unripe, and it rejected her due process claim for failure to state a claim upon which relief could be granted.

2. Section 1332 Claims. Two more of Muscarello's claims are based on state common law (trespass, in Count X, and nuisance, in Count XI); for them, she has invoked diversity jurisdiction under 28 U.S.C. § 1332. In fact, she appears to be relying on alienage jurisdiction rather than diversity of citizenship, as one of the parties (Gamesa) is a Spanish corporation. We discuss the jurisdictional basis for these claims in greater detail below. On the merits, although Muscarello concedes that the windmills have yet to be constructed, she takes the position that she can recover under trespass and nuisance theories based solely on the countys decision to grant the permit for the future windmills. The district court twice dismissed these claims because Muscarello did not properly plead citizenship. On the third try, without finding jurisdiction, the district court rejected these speculative theories of trespass and nuisance as unripe.

3. Section 1367 Claims. Finally, Muscarello included seven counts asserting violations of Illinois

law for which she relies on supplemental jurisdiction: Count I seeks a declaratory judgment under Illinois law for violations of local and state law; Count II seeks administrative review under the Illinois Administrative Review Act, 735 ILCS 5/3-101, et seq.; Count III requests a writ of certiorari under Illinois law; Count V claims an unlawful taking in violation of the Illinois Constitution; Count VII alleges a violation of due process under the Illinois Constitution; Count IX alleges a violation of equal protection under the Illinois Constitution; and Count XII seeks injunctive relief. The district court, after it dismissed the other counts for which Muscarello pleaded original jurisdiction, dismissed these claims under 28 U.S.C. § 1367(c)(3).

Muscarello appeals the dismissal of her twelve claims. In addition, cross-appellants appeal the district courts decision to deny their motion to stay administrative proceedings. We address the cross-appeal after we review Muscarello's arguments.

III

We look first at the claims that allegedly arise under the federal Constitutions provisions relating to takings, due process, and equal protection. The district court dismissed the takings and equal protection claims as unripe and the due process claim for failure to state a claim. Our review is *de novo* for all three of these rulings; we accept all of the well-pleaded, plausible factual allegations in the plaintiffs complaint as true and draw all reasonable inferences in favor of the plaintiff. *Ashcroft v. Iqbal*, ___ U.S. ___, ___, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009); *Patel v. City of Chicago*, 383 F.3d 569, 572 (7th Cir.2004); *McCullah v. Gadert*, 344 F.3d 655, 657 (7th Cir.2003).

A

The core of Muscarello's claims is an allegation that Ogle County violated the Fourteenth Amendment of the U.S. Constitution through a violation of the Fifth Amendments Takings Clause. The Takings Clause provides: "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V. Muscarello asserts that Ogle Countys decision to grant a permit to Baileyville constituted a taking without just compensation.

In order to invoke the protections of the Takings Clause, Muscarello must allege a taking of private property. Her complaint fails to meet that requirement. Muscarello does not allege any physical invasion of her property, a quintessential taking. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 427, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) ("When faced with a constitutional challenge to a permanent physical occupation of real property, this Court has invariably found a taking."). Instead, she relies on the more elusive concept of the regulatory taking. See *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992) (finding a regulatory taking only where "all economically beneficial or productive use of land" is denied). But here, the alleged economic effects are a far cry from the denial of all economically beneficial or productive use of the land. The Lucas Court was careful not to create the impression that all zoning decisions that may diminish an owners potential uses of her property, or compel a less valuable use, are takings. See *Covington Court v. Vill. of Oak Brook*, 77 F.3d 177, 179 (7th Cir.1996) ("We frequently have reminded litigants that federal courts are not boards of zoning appeals."). In order to qualify as a regulatory taking, the measure must place such onerous restrictions on land as to render it useless. Muscarello would have us turn land-use law on its head by accepting the proposition that a regulatory taking occurs whenever a governmental entity lifts a restriction on someones use of land. We see no warrant for such a step. See *Gagliardi v. Vill. of Pawling*, 18 F.3d 188, 191-93 (2d Cir.1994)(holding that residential landowners had no property interest in the enforcement of zoning laws on adjacent property) .

Even if we thought that Ogle County might have "taken" Muscarello's property when it issued the permit to Baileyville, Muscarello could not seek recovery in the way she has proceeded here. As we have observed in the past, in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985): the Supreme Court articulated a special ripeness doctrine for constitutional property rights claims which precludes federal courts from adjudicating land use disputes until: (1) the regulatory agency has had an opportunity to make a considered definitive decision, and (2) the property owner exhausts available state remedies for compensation. *Forseth v. Vill. of Sussex*, 199 F.3d 363, 368 (7th Cir. 2000). Muscarello concedes that she did not satisfy the exhaustion requirement. Therefore, her takings claim is unripe unless she is excused from that requirement. The district court found that Muscarello should not be excused, and we agree.

Muscarello attempts to save this part of her case through two exceptions to the exhaustion requirement: one for pre-enforcement facial challenges and one for situations in which relief is not available in state court. We conclude, however, that neither applies to this case. It is true that pre-enforcement facial challenges to the constitutionality of a law under the Takings Clause are not subject to the exhaustion requirement. See *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 345-46, 125 S.Ct. 2491, 162 L.Ed.2d 315 (2005) (citing *Yee v. Escondido*, 503 U.S. 519, 534, 112S.Ct.1522, 118 L.Ed.2d 153 (1992)). But Muscarello's claim is not a pre-enforcement facial challenge. She has focused on the economic deprivation that she herself will suffer if and when the taking occurs - the characteristic "as applied" challenge. Although almost in passing she suggests that the alleged taking was not for a public purpose, this point is too undeveloped to require comment.

Second, plaintiffs are excused from the exhaustion requirement if state law does not provide relief. *Daniels v. Area Plan Commn*, 306 F.3d 445, 455-56 (7th Cir. 2002). That rule does not fit Muscarello's case either, because Illinois provides ample process for a person seeking just compensation. See *Peters v. Clifton*, 498 F.3d 727, 733-34 (7th cir. 2007). See also 735 ILCS 30/10-5-5 (providing a statutory basis for inverse condemnation actions under Illinois law); *Inn of Lamplighter, Inc. v. Kramer*, 128 Ill. App.3d 317, 83 Ill.Dec. 785, 470 N.E.2d 1205 (1984)(noting that plaintiffs properly sought a writ of mandamus to compel an eminent domain action to compensate them for their alleged loss). Since Illinois law provides a remedy for Muscarello, her claims are not excused from the exhaustion requirement.

B

Muscarello also invokes federal-question jurisdiction for her claims that Ogle County violated the Equal Protection and Due Process Clauses. The district court dismissed Muscarello's equal protection claim for lack of ripeness, and the due process claim for lack of a protectable property interest. We consider these in turn.

The district court found that the equal protection claim was a takings claim in disguise, and thus that it too had to satisfy Williamson County. See *River Park v. City of Highland Park*, 23 F.3d 164, 167 (7th Cir. 1994) ("Labels do not matter. A person contending that state or local regulation of the use of land has gone overboard must repair to state court."). The district court was correct. Any equal protection claim based on a taking would be unripe and subject to all of the objections that we have just reviewed in connection with the takings claim.

Even if we assumed that Muscarello has pleaded an equal protection claim that is distinct from her takings theory, this would shift the focus of attention to the disparate treatment under the ordinance of residents and nonresidents. But that raises a pure question of law - whether the county was entitled to draw such a line - and that kind of classification is subject to the deferential rational basis test. A plan to encourage alternative energy production by freeing land from existing restrictions while providing in advance for the compensation of homeowners reflects both legitimate ends and rational means. Nonresidential owners still have all remedies that Illinois law puts at their disposal, and so they are far from left out. Muscarello therefore has not stated an equal protection claim upon which relief can be granted.

Her due process theory is similarly deficient. A party must have a protectable property interest in order to state a claim for a violation of due process based on a regulatory taking. See *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978). The district court held that Muscarello does not have a property interest in the lifting of zoning restrictions on anothers property. We agree. Muscarello is unable to describe a property interest that is not speculative (e.g. dependent on Baileyvilles future trespass) or a disguised taking (e.g. diminution of investment-backed expectations). This is enough to find that she cannot state a due process claim. Moreover, even if she did have a protectable property interest, the process due in a zoning case is minimal and normally must be pursued in state courts. See *River Park*, 23 F.3d at 167.

IV

Muscarello also alleges two state common-law claims, which she apparently thinks fall outside the constitutional "case" she has presented under her federal theories (or otherwise she would be asserting supplemental jurisdiction, see 28 U.S.C. § 1367 (a)), but for which she thinks jurisdiction is available under 28 U.S.C. § 1332. Count X alleges trespass and Count XI alleges nuisance. The district court dismissed these claims as unripe, because the windmills, which ostensibly would cause the nuisance or trespass, have not been built and it is thus impossible to know how they might trespass upon her property. The district court expressly declined to determine whether it had § 1332 jurisdiction, since Article IIIs case-or-controversy requirement is an alternative jurisdictional prerequisite. For the sake of completeness, however, we consider whether jurisdiction under § 1332 is secure, as this would supply an independent ground for dismissal if it is not. We then turn to the issue of ripeness.

A

Muscarello's trespass and nuisance claims were brought against Baileyville, a limited liability company; Navitas Energy, its sole shareholder and owner; Gamesa, the corporate parent of Navitas; the Board; and the ZBA. She failed to plead citizenship properly in her original complaint, but the district court granted her leave to file an amended complaint to remedy those errors. Unfortunately, her amended complaint also fell short, and so the district court granted her a third bite at the apple. As pleaded in her final amended complaint, Muscarello has alleged that she is a citizen of Arizona and that none of the defendants is a citizen of that state.

When the facts that determine federal jurisdiction are contested, the plaintiff must establish those facts by a preponderance of the evidence. *Ill. Bell Tel. Co. v. Global NAPs Ill., Inc.*, 551 F.3d 587, 590 (7th cir. 2008). Since the district court did not make a finding on complete diversity, this court must approach the question *de novo.*

We must begin, however, with Muscarello's own citizenship, because the defendants contest her allegation of Arizona citizenship and assert that she, like her defendant-husband, is a citizen of Illinois. (It seems that Muscarello's decision to include her husband as a defendant was based on an erroneous reading of § 5/3-107 of the Administrative Review Act of Illinois, but her reasons are of no concern to this appeal.) The record contains enough evidence to support a finding that Patricia Muscarello is domiciled in Arizona. She submitted an affidavit that swears to the following facts: in 2001 she moved her state of permanent residence from Illinois to Arizona; she has intended to remain domiciled there ever since; and she spends more than seven months per year in Arizona. She is registered to vote in Arizona, has a drivers license in Arizona, listed her Arizona address with Medicare and Social Security, listed her Arizona address on various property tax bills for

Illinois properties, and even received notices from Ogle County regarding Baileyvilles Special Use Permit in Arizona. The evidence with which the defendants countered her affidavit is easily dismissed. They point to her husbands uncontested Illinois citizenship, an Illinois drivers license for Patricia that expired before the complaint was filed, her ownership of property in Illinois, and her statement that she lived in Illinois full-time until at least 2001. Defendants also offer some tax bills that list an Illinois address, including one that claims a homestead exemption for Illinois. Although the last item might give one pause, on balance we find that Muscarello sufficiently established her Arizona domicile.

Next, we turn to the defendants. In order to support jurisdiction under § 1332, Muscarello must establish complete diversity with the defendants. We begin with the institutional Ogle County defendants: the Board and the ZBA. Both entities are citizens of Illinois. See *Illinois v. City of Milwaukee*, 406 U.S. 91, 97, 92 S.Ct. 1385, 31 L.Ed.2d 712 (1972) ("It is well settled that for purposes of diversity of citizenship, political subdivisions are citizens of their respective States.").

Baileyville is next. It is a limited liability corporation, and thus we must look to the citizenship of each of its members to determine its citizenship for diversity purposes. *Wise v. Wachovia Sec., LLC*, 450 F.3d 265, 267 (7th Cir.2006). (Muscarello missed this point, but the record contains the necessary information.) The record indicates that Navitas, which is a Minnesota corporation with its principal place of business in that state, is the sole shareholder, member, and owner of Baileyville.

Finally, we look at Gamesa, Navitass parent corporation since 2003. Gamesa is a publicly traded Spanish company with its seat in Spain. It therefore is classified as an alien. Under 28 U.S.C. § 1332 (a) (3), the federal courts have original jurisdiction over civil actions between "citizens of different States and in which citizens or subjects of a foreign state are additional parties." Thus, from the point of view of citizenship, diversity of citizenship (or alienage) is satisfied.

That leaves the amount-in-controversy requirement of § 1332, under which Muscarello had to allege that more than $75,000 is in controversy. She has so alleged, and in the absence of any challenge from the defendants, we see no reason why this should not be the case, especially since this circuit follows the "either viewpoint" rule. See *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 609 (7th Cir. 1997) (citing *McCarty v. Amoco Pipeline Co.*, 595F.2d389, 393-95 (7th Cir. 1979)).

B

If Muscarello's trespass and nuisance claims were ripe, we would be able to consider them. But we conclude, as did the district court, that they are not. This provides an independent ground for dismissal. The windmills have not been built yet, and so it is difficult to see how they might either be causing a trespass on Muscarello's land or creating a nuisance.

Muscarello tries to argue that the permit itself creates an "interference with her property and her property rights," but this is too metaphysical for us. We cannot see how the permit, unexercised, causes a trespass or nuisance as Illinois law conceptualizes those causes of action. *In re Chicago Flood Litigation*, 176 Ill.2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265, 277-78 (1997), provides that nuisance and trespass both require an invasion. Nuisance requires only a perceptible invasion, but the permit did not even lead to this minor effect. Trespass is even tougher; it is usually defined by a "crass physical invasion." *Id.* at 205,223 Ill.Dec. 532, 680N.E.2d265. Obviously the permit did not march onto Muscarello's land, nor, as far as this record shows, did any of the defendants in the effort to start building their wind facility. Limiting her claims to the permit, as she must, Muscarello cannot succeed at this time under either a nuisance or trespass theory.

V

We next turn to the seven claims for which Muscarello pleaded supplemental jurisdiction pursuant to 28 U.S.C. § 1367. The district court elected to dismiss these claims, as authorized by § 1367(c)(3). We see no abuse of discretion in that action, as far as it goes. The only question is whether, since diversity might provide an alternative basis of subject-matter jurisdiction, the court should have retained them on that basis. Muscarello never asked it to do so, however, and so the question is even narrower: should the court have investigated other potential grounds for its jurisdiction that were not asserted?

It is well established that the burden of establishing proper federal subject-matter jurisdiction rests on the party asserting it - here, the plaintiff. See *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994); *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 809 n. 6, 106 S.Ct. 3229, 92 L.Ed.2d 650 ("Jurisdiction may not be sustained on a theory that the plaintiff has not advanced."). That said, the rule in this circuit has been that the "courts discretion to dismiss for lack of subject matter jurisdiction when the plaintiff could have pleaded the existence of jurisdiction and when in fact such jurisdiction exists, should be exercised sparingly." *Hoefferle Truck Sales, Inc. v. Divco-Wayne Corp.*, 523 F.2d 543, 549 (7th cir. 1975) (citing *Littleton v. Berbling*, 468 F.2d 389, 394 (7th cir. 1972), revd on other grounds sub nom., *OShea v. Littleton*, 414 U.S. 488, 94S.Ct.669, 38 L.Ed.2d 674 (1974)). But to say that dismissals under these circumstances should be rare does not mean that this step is never appropriate. See, e.g., *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 849 F.2d 1197 (9th Cir. 1988) (remanding the case with instructions to dismiss for lack of jurisdiction, and expressly declining to determine whether jurisdiction existed under § 1332 because the parties did not plead it). In *Littleton, supra*, immediately after acknowledging the principle that a court usually should not dismiss a case just because the plaintiff failed to articulate a basis for jurisdiction that was evidently proper, we cautioned that "the ultimate duty of pleading his case rests upon the party and not upon the district court to divine what is not reasonably there." 468 F.2d at 394.

Here, as we have already pointed out, the district court gave Muscarello at least three opportunities to come up with proper jurisdictional allegations. We followed up at oral argument with the question why she had not pleaded alienage or diversity of citizenship for these seven counts, and then essentially walked her through the application of § 1332 to these claims. (As we implied earlier, it is at least theoretically possible that some or all of these theories do not "form part of the same case or controversy under Article III of the United States Constitution, " as required by § 1367(a), and thus could be pursued only if diversity or alienage jurisdiction is present. For anything that fell outside the supplemental jurisdiction, dismissal was required, not discretionary, unless Muscarello could point to an independent basis of jurisdiction.) Parties may correct defective allegations of jurisdiction even during trial or appeal, 28 U.S.C. § 1653, yet Muscarello has not availed herself of that opportunity for her seven supplemental counts. We are not inclined in this case to make Muscarello's jurisdictional arguments for her. As matters stand, she is free to proceed on these seven counts in state court, if she so chooses, and so she is not seriously prejudiced by the district courts action. "[T]he plaintiff is absolute master of what jurisdiction he will appeal to." *Healy v. Sea Gull Specialty Co.*, 237

U.S. 479, 480, 35S.Ct.658, 59 L.Ed. 1056 (1915). We find that this plaintiff also is the absolute master of what jurisdiction she will eschew.

VI

Finally, we address Baileyville's motion to stay administrative proceedings. An Ogle County ordinance provides that special use permits expire after one year unless construction or use has commenced. On July 28, 2008, Baileyville filed a motion seeking a stay of any administrative proceeding to enforce this time period against it before this litigation is complete. The district court denied this motion, and Baileyville has cross-appealed to this court. Section 5/3-111(a) of the Illinois Administrative Review Act provides that the Illinois Circuit Court has the power "to stay the decision of the administrative agency in whole or in part pending the final disposition of the case." 735 ILCS 5/3-111(a)(1). In Gold v. Kamin, 170 Ill. App.3d 312, 120 Ill.Dec. 595, 524 N.E.2d 625 (1988), the Illinois Court of Appeals held that land-use litigation does not excuse a party from the expiration of a permit if the party did not request an administrative stay during the litigation. *Id.* at 627-28. See *Homeowners Organized to Protect the Envt, Inc. v. First Natl Bank of Barrington*, 167 Ill.App.3d 714, 118 Ill. Dec. 509, 521 N.E.2d 1202, 1206 (1988) (affirming the trial courts decision to stay the expiration of a permit during litigation).

Fearing a repeat of *Gold*, Baileyville requested that the district court - which it viewed as the equivalent of the Illinois Circuit Court - issue a stay of any administrative proceedings to terminate the permit, even though no such proceedings have begun and Baileyville has no reason to believe that Ogle County will commence them.

The district court dismissed Baileyvilles request for a stay, finding that it lacked jurisdiction over the case as a whole and that the statute was inapplicable since Baileyville could not identify a particular administrative action it wanted the court to stay. The district court also cited federalism concerns in "direct[ing] the Ogle County Board how to enforce its zoning ordinances."

Illinois courts review the decision to grant administrative stays for an abuse of discretion, and we too would treat such a decision deferentially. See *Douglas Transit, Inc. v. Ill. Commerce Commn*, 145 Ill. App.3d 115, 99 Ill.Dec. 173, 495 N.E.2d 620, 623 (1986). We find no abuse of discretion on these facts. Ogle County and Baileyville have worked together to get this project off the ground, and apparently the ZBA has represented in another action that it believes that Baileyville has satisfied the permits "commencement of use" requirement. The district court reasonably could have found that there was no need for judicial action under those circumstances.

* * *

We hold that Muscarello's federal takings, equal protection, and due process theories failed to state a claim upon which relief could be granted. Her state-law trespass and nuisance theories are not ripe for consideration. Finally, she failed to avail herself of the opportunity to allege and support an independent basis of federal subject-matter jurisdiction over the other seven claims. The district court was thus entitled to dismiss those claims without prejudice under § 1367 (c) (3) .

With respect to Baileyville's cross-appeal, we hold that the district court did not abuse its discretion in denying the motion for an administrative stay. We therefore AFFIRM the judgments of the district court.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

August 17, 2010

Before

WILLIAM J. BAUER, Circuit Judge

DIANE P. WOOD, Circuit Judge

ANN CLAIRE WILLIAMS, Circuit Judge

Nos. 08-2464 & 09-1381

PATRICIA A. MUSCARELLO,
Plaintiff-Appellant, Cross-Appellee,

v.

OGLE COUNTY BOARD OF COMMISSIONERS, et al., Defendants- Appellees,

and

BAILEYVILLE WIND FARMS, LLC, et al., Defendants-Appellees, Cross-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Western Division.

No. 06 C 50017

Frederick J. Kapala, Judge.

ORDER

On consideration of the Petition for Rehearing filed by the appellant on July 22,2010, all members of the original panel have voted to DENY the petition.

Accordingly, the petition for rehearing is hereby DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, WESTERN
DIVISION

Case No. 06 C 50017

Honorable Philip G. Reinhard

Magistrate P. Michael Mahoney

PATRICIA A. MUSCARELLO,)
a citizen of the State of Arizona,)
Plaintiff,)
)
v.)
)
OGLE COUNTY BOARD OF)
COMMISSIONERS, an Illinois municipal)
Government and a)
citizen of the State of Illinois,)
BETTY GOCKEN, Chairman of the Ogle)
County Board of Commissioners)
and a citizen of the State of Illinois,)
OGLE COUNTY ZONING BOARD)
OF APPEALS, a citizen of the)
State of Illinois,)
BRUCE MCKINNEY,Chairman of Zoning)
Board of Appeals and a citizen)
of the State of Illinois,)
MICHAEL REIBLE, Planning and Zoning)
Administrator and a citizen)
of the State of Illinois,)

BAILEYVILLE WIND FARMS, LLC,)
a Minnesota limited liability company)
and a citizen of the State of Minnesota,)
NAVITAS ENERGY, INC., a Minnesota)
corporation and a citizen)
of the State of Minnesota, GAMESA)
CORPORACION TECNOLOGICA, S.A., a)
Spanish Corporation and a citizen of the)
Country of Spain, RALPH AND SHIRLEY)
COFFMAN, citizens of the State of Illinois,)
WAVA M. SCHNEIDERMAN,)
a citizen of the State of Illinois and)
RAYMOND I. MILLER, a)
Citizen of the State of Kansas, as Successor)
Trustees of the Eunice Miller Trust, LYLE)
HUNDERTMARK, MARK AND JODIE)
HUNDERTMARK, citizens of the State of)
Illinois, LEIGH HOLLEWELL, GARY)
HOLLEWELL, DORIS HOLLEWELL,)
citizens of the State of Illinois, ROBERT G.)
BORNEMAN, a citizen of the State)
of Illinois, STEVEN LUNDGREN,)
a citizen of the State of Illinois,)
JOHN DANIS, a citizen of the State)
of Illinois, CHRIS FILLIPS, a citizen of the)
State of Illinois, JULIE MENNANGA,)
a citizen of the State of Illinois,)
JOYCE AND RANDALL STEINBECK,)
citizens of the State of Illinois, STEVE)
LEEK, a citizen of the State of Illinois,)
MARY ROSE KRUPA, a citizen of the State)
of Illinois, RICK LOTT, a citizen of the)
State of Illinois, HARVEY BOLEN,)

a citizen of the State of Illinois, REBECCA)
SHURTLEFF, a citizen of the State)
of Illinois, JOSHUA BOLEN, a citizen of the)
State of Illinois, JIM HUFF, a)
citizen of the State of Illinois, DEBBIE)
STEINBACH, a citizen of the State)
of Illinois, GARRETT LEEK, a citizen of)
the State of Illinois, BRENT BACH,)
a citizen of the State of Illinois,)
DAN BUSKOHL, a citizen of the State)
of Illinois, and JOE KERWIN, a citizen of)
the State of Illinois PAUL EBERTH, a)
citizen of the State of Minnesota, GEORGE)
J. STERZINGER, a citizen of the District)
of Columbia, CHRISTOPHER NUCKOLS,)
a citizen of the State of Minnesota,)
TODD WEEGENS, a citizen of the State)
of Illinois, BARRY KLINGER, a)
citizen of the State of Illinois, THOMAS E.)
HEWSON, JR., a citizen of the State)
of Virginia, MICHAEL MCCANN,)
a citizen of the State of Illinois,)
RANDY PALS, a citizen of the State of)
Illinois, RON KERN, a citizen of the State of)
Illinois, JACK THEDEN, a citizen)
of the State of Illinois, ELDRED ROGERS,)
a citizen of the State of Illinois,)
JOSE CALVO, a citizen of the)
State of Pennsylvania, DENNIS)
CRADDOCK, a citizen of the State of Illinois,)
ELMER RHODES, a citizen of the State)
of Illinois, and MARCO J. MUSCARELLO,)
a citizen of the State of Illinois,)

Defendants.)

PLAINTIFF'S FIRST AMENDED COMPLAINT AT LAW AND EQUITY

Plaintiff, PATRICIA A. MUSCARELLO (hereinafter "Plaintiff") a citizen of the State of Arizona, by and through her attorneys DENKER & MUSCARELLO, LLC, in support of her First Amended Complaint for (1) Declaratory Judgment, (II) Administrative Review, (III) Writ of Certiorari, (IV) Takings under Section 1 of the Fourteenth Amendment to the Constitution of the United States, (V) Takings under Sections 2 and 15 of Article I of the Constitution of the State of Illinois, (VI) Violation of Due Process under Section 1 of the Fourteenth Amendment of the Constitution of the United States, (VII) Violation of Due Process under Section 2 of Article I of the Constitution of the State of Illinois, (VIII) Violation of Equal Protection under Section 1 of the Fourteenth Amendment of the Constitution of the United States, (IX) Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois, (X) Trespass, and (XI) Public Nuisance and (XII) Injunctive Relief against OGLE COUNTY BOARD OF COMMISSIONERS, an Illinois county government and citizen of the State of Illinois, BETTY GOCKEN, a citizen of the State of Illinois and Chairman of the Ogle County Board of Commissioners (Ogle County Board of Commissioners and Betty Goeken herein collectively

"Ogle County Board of Commissioners"), OGLE COUNTY ZONING BOARD OF APPEALS, an Illinois County government and a citizen of the State of Illinois, BRUCE MCKINNEY, a citizen of the State of Illinois and Chairman of the Zoning Board of Appeals, MICHAEL REIBEL, a citizen of the State of Illinois and Planning and Zoning Administrator (Zoning Board of Appeals, Bruce McKinney, and Michael Reibel herein collectively "Zoning Board of Appeals"), BAILEYVILLE WIND FARMS, LLC, a limited liability company formed under the laws of Minnesota and a citizen ofthe State of Mim1esota (hereinafter "Baileyville"), NAVITAS ENERGY, INC., a corporation formed under the laws of Minnesota and a citizen of the State of Minnesota (hereinafter "Navitas"), GAMESA CORPORACION TECNOLOGICA, S.A., a corporation formed under the laws of Spain and a citizen of Spain (hereinafter "Gamesa"), RALPH AND SHIRLEY COFFMAN, citizens of the State of Illinois (hereinafter "Coffmans"), EUNICE MILLER TRUST, an Illinois Trust (hereinafter "Miller Trust"), LYLE HUNDERTMARK, MARK HUNDERTMARK, AND JODIE HUNDERTMARK, citizens of the State of Illinois (hereinafter "Hundertmarks"), LEIGH HOLLEWELL, GARY HOLLEWELL, AND DORIS HOLLEWELL, citizens of the State of Illinois (hereinafter "Hollewells"), and ROBERT G. BORNEMAN, a citizen of the State of Illinois (hereinafter "Borneman") (collectively, Coffman, Miller Trust, Hundertmarks, Hollewells and Borenman shall hereinafter be reterred to as "Adjacent Properties"), STEVEN LUNDGREN, a citizen of the State of Illinois (hereinafter "Lundgren"), JOHN DANIS, a citizen of the State of Illinois (hereinafter "Danis"), CHRIS FILLIPS, a citizen of the State of Illinois (hereinafter "Fillips"), JULIE MENNANGA, a citizen of the State of Illinois (hereinafter "Mennanga"), JOYCE AND RANDALL STEINBECK, citizens of the State of Illinois (hereinafter "Steinbecks"), STEVE LEEK, a citizen of the State of Illinois (hereinafter "S. Leek"), MARY ROSE KRUPA, a citizen of the State of Illinois (hereinafter "Krupa"), RICK LOTT, a citizen of the State of Illinois (hereinafter "Lott"), HARVEY BOLEN, a citizen of the State of Illinois (hereinafter "H. Bolen"), REBECCA SHURTLEFF, a citizen of the State of Illinois (hereinafter "Shurtleff'), JOSHUA BOLEN, an Illinois Resident (hereinafter "J. Bolen"), JIM HUFF, a citizen of the State of Illinois (hereinafter "Huff"), DEBBIE STEINBACH, a citizen of the State of Illinois (hereinafter "Steinbach"), GARRETT LEEK, a citizen of the State of Illinois (hereinafter "G. Leek"), BRENT BACH, a citizen of the State of Illinois (hereinafter "Bach"), DAN BUSKOHL, a citizen of the State of Illinois (hereinafter "Buskohl"), JOE KERWIN, a citizen of the State of Illinois (hereinafter "Kerwin"), PAUL EBERTH, a citizen of the State of Minnesota (hereinafter "Eberth"), GEORGE J. STERZINGER, a citizen of the District of Columbia (hereinafter "Sterzinger"), CHRISTOPHER NUCKOLS, a citizen of the State of Minnesota (hereinafter "Nuckols"), TODD WEEGENS, a citizen of the State of Illinois (hereinafter "Weegens"), BARRY KLINGER, a citizen of the State of Illinois (hereinafter "Klinger"), THOMAS E. HEWSON, JR., a citizen of the State of Virginia (hereinafter "Hewson"), MICHAEL MCCANN, a citizen of the State of Illinois (hereinafter "McCann"), RANDY PALS, a citizen of the State of Illinois (hereinafter "Pals"), RON KERN, a citizen of the State of Illinois (hereinafter "Kern"), JACK THEDEN, a citizen of the State of Illinois (hereinafter "Theden"), ELDRED ROGERS, a citizen of the State of Illinois (hereinafter "Rogers"), JOSE CALVO, a citizen of the State of Pennsylvania (hereinafter "Calvo"), DENNIS CRADDOCK, a citizen of the State of Illinois (hereinafter "Craddock"), ELMER RHODES, a citizen of the State of Illinois (hereinafter "Rhodes"), and MARCO J. MUSCARELLO, a citizen of the State of Illinois (hereinafter "Muscarello") (Lundgren, Danis, Fillips, Mennanga, Steinbecks, S. Leek, Krupa, Lott, H. Bolen, Shurtleff, I. Bolen, Huff, Steinbach, G. Leek, Bach, Buskohl, Kerwin, Eberth, Sterzinger, Nuckols, Weegens, Klinger, Hewson, McCann, Pals, Kern, Theden, Rogers, Calvo, Craddock, Rhodes, and Muscarello collectively hereinafter "Parties of Record"), states as follows. Allegations made on belief are premised on the belief that the same are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

THE PARTIES

1. Plaintiff, a citizen of the State of Arizona, owns a 240 acre parcel of property located within the State of Illinois, County of Ogle, under Parcel Identification Numbers 03-10-100-003 and

03-07-300-004, and legally described as provided in Exhibit A attached hereto and incorporated herein. In further support of Plaintiffs citizenship in the State of Arizona, Plaintiff further states:

A. On or about December 15, 2001, Plaintiff moved her state of permanent residence from Illinois to Arizona and has intended to remain domiciled in Arizona ever since.

B. Plaintiff resides at 9225 N. Crimson Canyon, Fountain Hills, Arizona 85268.

C. On December 23, 2001, Plaintiff registered to vote in the State of Arizona and since December 23, 2001, Plaintiff has taken no action to vote, or register to vote in the State of Illinois.

D. On or about January 30, 2002, Plaintiff obtained a driver's license in the State of Arizona and Plaintiff's driver's license was subsequently cancelled by the State of Arizona and Plaintiff's Illinois driver's license originally expired on April 30, 2001. Plaintiff did receive a sticker to place on her Illinois driver's license on or about April 30, 2001, extending her expiration date until April 30, 2005. Plaintiff has not applied or reapplied to obtain an Illinois driver's license since that time.

E. Beginning in the year 2002, the State of

Arizona was sufficiently convinced that Plaintiff was a resident of the State of Arizona such that Plaintiff was able to enroll her son, John Peter Muscarello, as an Arizona resident at Arizona State University for the years 2002, 2003, 2004, and 2005.

F. Plaintiffs address at 9225 N. Crimson Canyon, Fountain Hills, Arizona is listed with Medicare and Social Security is her primary residence and Plaintiff s Social Security checks are directly deposited into Plaintiff s Arizona bank account in Fountain Hills, Arizona.

G. Although Plaintiff does own a home in the State of Illinois and visits her children in the State of Illinois several times per year, Plaintiff spends the majority of the year (more than seven (7) months) in the State of Arizona and Plaintiffs intention to remain a resident and domiciled in the State of Arizona and no other state.

H. The Ogle County Zoning Board of Appeals sent notices related to the Special Use Application filed by Baileyville which lists Plaintiff as an owner of property in Ogle County, showing Plaintiffs address as 9225 N. Crimson Canyon, Fountain Hills, Arizona.

I. The Special Use Application filed by Baileyville shows Plaintiffs residential address of 9225 N. Crimson Canyon, Fountain Hills, Arizona.

J. Plaintiff has become and remains a resident of and domiciled in the State of Arizona even though Plaintiffs husband, Marco J. Muscarello has remained a citizen of and resides in the State of Illinois.

K. It is Plaintiff's intention to remain a citizen of and domiciled in the State of Arizona, and Plaintiff has no plans to change citizenship or domicile from the State of Arizona any time in the future.

2. Defendant, Ogle County Board of Commissioners, is a county govemment authorized under the existing laws of the State of Illinois and has an address located at 4th and Washington Streets, Oregon, Illinois. Specifically, the Ogle County Board of Commissioners is authorized under the Illinois Counties Code (55 ILCS 1/1000 et. seq.) The Ogle County Board of Commissioners is a citizen of the State of Illinois.

3. Betty Goeken, a citizen of the State of Illinois and Chairman of the Ogle County Board of Commissioners, resides at 14986 E. Lindenwood Road, Lindenwood, Illinois.

4. Zoning Board of Appeals, is a zoning board authorized by Ogle County Board of Commissioners and the existing laws of the State of Illinois. The Zoning Board of Appeals has an address of 911 W. Pines Road, Oregon, Illinois. The Zoning Board of Appeals is a citizen of the State of Illinois.

5. Bruce McKinney, a citizen of the State of

Illinois and the Chairman of the Zoning Board of Appeals, resides at 1406 Brookside Drive, Rochelle, Illinois.

6. Michael Reibel, a citizen of the State of Illinois and the Planning and Zoning Administrator for Ogle County and resides at 4317 E. Ridgeview Lane, Byron, Illinois.

7. Baileyville is a limited liability company, organized under the existing laws of the State of Minnesota and has a registered office in Minnesota located at 3001 Broadway Street NE, Suite 695, Minneapolis, Minnesota 55413. Baileyville is registered as a foreign corporation under the existing laws of the State of Illinois with a registered office located at 208 S. LaSalle Street, Suite 814, Chicago, Illinois. Baileyville's principal place of business is in Minnesota and Baileyville is a citizen of the State of Milmesota. Altematively, even if Baileyville's principal place of business is in and is a citizen of the State of Illinois, Baileyville is still not a citizen of the State of Arizona.

8. Upon information and belief, Baileyville has at all times material to the allegations contained herein been a wholly owned subsidiary of Navitas, as Navitas is the sole shareholder, member, and owner, as the case may be, of Baileyville, and further maintains sole control of management and affairs of Baileyville.

9. Navitas is a corporation organized under the existing laws of the State of Minnesota and has a registered office in Minnesota located at 3001 Broadway Street, NE, Suite 695, Minneapolis, Minnesota. Navitas is not registered as a foreign

corporation within the State of Illinois. Navitas' principal place of business is in Milmesota. Navitas is a citizen of the State of Minnesota.

10. Upon information and belief Gamesa is a seventy-seven percent (77%) owner of Navitas and maintains control of management and affairs of Navitas.

11. Upon information and belief, Gamesa is corporation organized under the existing laws of the Country of Spain and has a registered office in Spain of Vitori a, Portal de Gamarra 40, Espana, and a headquarters address of Plza Pablo Ruiz Picasso, 1 Edif.. Torre Picazzo, Plta 24, 28020, Madrid, Espana. Gamesa's principal place of business is in the Country of Spain. Gamesa is a citizen of the Country of Spain.

12. The Coffmans, citizens of the State of Illinois, are the owners of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the North and West of Plaintiff, with Parcel Identification Numbers of 02-12-400-003 and 03-07-300-003. The legal description of said parcels are attached hereto and incorporated herein as Exhibit B. The Coffinans reside at 9211 W. Brush Road, German Valley, Illinois.

13. The Miller Trust is the owner of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the West of Plaintiff, with a Parcel Identification Number of 02-13-200-003. The legal description of the parcel is attached hereto and incorporated herein as Exhibit C. The Miller Trust is located at 5090 S. Rock City Boulevard, German Valley, Illinois and is considered a citizen of the

State of Illinois.

14. The Hundertmarks, citizens of the State of Illinois are the owners of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the North and East of Plaintiff, with a Parcel Identification Number of 03-07-400-004. The legal description of the parcel is attached hereto and incorporated herein as Exhibit D. The Hundertmarks reside at 9125 E. Edwardsville Road, German Valley, Illinois.

15. The Hollewells, citizens of the State of Illinois, are the owners of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the East of Plaintiff with a Parcel Identification Number of 03-18-200-001. The legal description of the parcel is attached hereto and incorporated herein as Exhibit E. The Hollewells reside at 12009 N. Adeline Road,German Valley, Illinois.

16. Borneman, a citizen of the State of Illinois, is the owner of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the South and East of Plaintiff, with a Parcel Identification Number of 03-18-400-001. The legal Description of the parcel is attached hereto and incorporated herein as Exhibit F. Borneman resides at 6679 Illinois Route 72, Leaf River, Illinois.

17. Lundgren, a citizen of the State of Illinois, resides at 10534 Rock City Road, German Valley, Illinois.

18. Danis, a citizen of the State of Illinois, resides at 10534 Rock City Road, German Valley,

Illinois.

19. Fillips, a citizen of the State of Illinois, resides at 10365 Leaf River Road, Leaf River, Illinois

20. Mennanga, a citizen of the State of Illinois, resides at 16989 Comly Road, Pecatonica, Illinois.

21. Steinbach, a citizen of the State of Illinois, resides at 6163 E. Monague Road, German Valley, Illinois.

22. Steinbecks, citizens of the State of Illinois, reside at 9770 W. Brush Road, German Valley, Illinois.

23. Krupa, a citizen of the State of Illinois, with a mailing address of P.O. Box 121, Leaf River, Illinois.

24. Lott, a citizen of the State of Illinois, resides at 11 035 N. Adeline Road, German Valley, Illinois.

25. H. Bolen, a citizen of the State of Illinois, resides at 10369 N. Rock City Road, German Valley, Illinois.

26. Shurtleff, a citizen of the State of Illinois, resides at 9805 N. Rock City Road, German Valley, Illinois.

27. J. Bolen, a citizen of the State of Illinois, resides at 10369 N. Rick City Road, German Valley, Illinois.

28. Huff, a citizen of the State of Illinois, resides at 9791 Brush Road, German Valley, Illinois.

29. Leek, a citizen of the State of Illinois, resides at 7380 Montague Road, German Valley, Illinois.

30. Bach, a citizen of the State of Illinois, resides at 10753 N. Adeline Road, German Valley,

Illinois.

31. Buskohl, a citizen of the State of Illinois, resides at 6848 W. Adeline Road, Leaf River, Illinois.

32. Kerwin, a citizen of the State of Illinois, resides at 11920 N. Adeline Road, German Valley, Illinois.

33. Upon information and believe,[sic] Eberth is a citizen of Minnesota with a mailing address of 3001 Broadway Street, NE, Suite 695, Minneapolis, Minnesota.

34. Upon information and belief, Sterzinger is a citizen of the District of Columbia with a mailing address of 1612 K Street, Washington, DC.

35. Upon information and belief, Nuckols is a citizen of Minnesota with a mailing address of 3001 Broadway Street, NE, Suite 695, Minneapolis, Minnesota.

36. Weegens, a citizen of the State of Illinois, resides at 1752 Highland Drive, Freeport, Illinois.

37. Upon information and belief Klinger is a citizen of Illinois with a mailing address of 240 W. Main Street, Compton, Illinois.

38. Upon information and belief, Hewson is a citizen of Virginia with a mailing address of 1901 N. Moore Street, Suite 1200, Arlington, Virginia.

39. McCann is a citizen of the State of Illinois with a mailing address of 820 Orleans Street, Suite 200, Chicago, Illinois.

40. Pals, a citizen of the State of Illinois, resides at 5307 W. Montague Road, German Valley, Illinois.

41. Kern, a citizen of the State of Illinois, resides at 5282 W. Townline Road, Leaf River,

Illinois.

42. Theden, a citizen of the State of Illinois, resides at 4389 W. Otter Road, Leaf River, Illinois.

43. Rogers, a citizen of the State of Illinois, resides at 3330 Chicago Road, Paw Paw, Illinois.

44. Upon information and belief: Calvo is a citizen of Pennsylvania with a mailing address of 111 S. 15th Street, Philadelphia, Pennsylvania.

45. Craddock, a citizen of the State of Illinois, resides at 1062 Bingham Road, Stewart, Illinois.

46. Rhodes, a citizen of the State of Illinois, resides at 896 Bingham Road, Stewart, Illinois

47. Muscarello, a citizen of the State of Illinois, resides at 38W386 Burr Oak Lane, St. Charles, Illinois. Muscarello is Plaintiffs husband. Muscarello was named as a defendant in this cause of action, not because Plaintiff wanted to sue Muscarello, but because Muscarello participated in a certain public healing before the Zoning Board of Appeals, and in so doing, became a participant or a party of record, of that public hearing. Section 5/3-107 of the Administrative Review Act of Illinois (735 ILCS 5/3-107) requires that a party seeking administrative review must name all parties of record. Consequently, Plaintiff was required to name Muscarello as a defendant within in the civil action for Count II - Administrative Review, just as the other Parties of Record were named. Muscarello is not on title to the property in Ogle County, which is only in Plaintiffs name. Muscarello has a law license and realtors license in the State of Illinois and has maintained his citizenship, domicile and residence in the State of Illinois on purpose and by design due to

his practice of law in Illinois. Muscarello is registered to vote and has a driver's license in the State of Illinois. Muscarello was named in the Complaint for the sole purpose of satisfying the requirements of the Administrative Review Act, and not for any other purpose.

JURISDICTION AND VENUE

48. The civil actions for (IV) Takings under Section 1 of the Fourteenth Amendment to the Constitution of the United States, and (VI) Violation of Due Process under Section 1 of the Fourteenth Amendment of the Constitution of the United States, and (VIII) Violation of Equal Protection under Section 1 of the Fourteenth Amendment of the Constitution of the United States are federal questions. This Court has jurisdiction of these actions by reason of 28 USC 1331.

49. The civil actions for (X) Trespass and (XI) Public Nuisance involve a sum in excess of $75,000.00, and involve issues of law and fact wholly between (i) citizens of different states, and (ii) citizens of a state in which citizens or subjects of a foreign state are additional parties. This court has jurisdiction of these actions by reason of 28 USC 1332.

50. The civil actions for (I) Declaratory Judgment, (II) Administrative Review, (III) Writ of Certiorari, (IV) Takings under Sections 2 and 15 of Article I of the Constitution of the State of Illinois, (VII) Violation of Due Process under Section 2 of Article I of the Constitution of the State of Illinois,

and (IX) Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois, and (XII) Injunctive Relief, are so related to the claims with original jurisdiction under 28 USC 1331 and 28 USC 1332 that they form part of the same case or controversy. This Court has jurisdiction of these actions by reason of 28 USC 1367.

51. As the actions to which these claims arise within the Northem District of Illinois, Westem Division, venue is proper in this Court, pursuant to 28 USC 1391 (a), (b), (c), and (f).

NATURE OF ACTION

52. The actions set forth under the existing laws of the United States of America are (IV) Takings under Section 1 of the Fourteenth Amendment to the Constitution of the United States, (VI) Violation of Due Process under Section 1 of the Fourteenth Amendment of the Constitution of the United States, and (VIII) Violation of Equal Protection under Section 1 of the Fourteenth Amendment of the Constitution of the United States.

53. The actions set forth under the existing laws of the State of Illinois are (I) Declaratory Judgment, (II) Administrative Review, (III) Writ of Certiorari, (V) Takings under Sections 2 and 15 of Article I of the Constitution of the State of Illinois, (VII) Violation of Due Process under Section 2 of Article I of the Constitution of the State of Illinois, (IX) Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois, (X) Trespass, (XI) Public Nuisance, and (XII)

Injunctive Relief.

FACTUAL BACKGROUND COMMON TO ALL COUNTS

54. Pursuant to the power delegated to the Ogle County Board of Commissioners by the Illinois Counties Code, specifically 55 ILCS 5/5-12009.5, the Ogle County Board of Commissioners may pass an ordinance for the classification of zoning special uses and may grant a special use after a public hearing conducted by the Zoning Board of Appeals as set forth under the terms of 55 ILCS 5/5-12009.5.

55. The Ogle County Board of Commissioners originally adopted a Amendatory Zoning Ordinance on March 9, 1965, and the Ogle County Board of Commissioners have since amended that Zoning Ordinance numerous times (the Amendatory Zoning Ordinance and amendments thereto are hereinafter "Zoning Ordinance"). A true and accurate copy of the Zoning Ordinance is attached hereto and incorporated herein as Exhibit G. Only Division 9 of the Zoning Ordinance, which includes the applicable sections at issue in this matter have been included in order to reduce the paperwork filed herein.

56. On or about September 15, 2003, the Zoning Board of Appeals on its own initiative-considered a text amendment to the Zoning Ordinance which provided for the application for a special use permit for the building of Wind Energy Conservation Systems as

described in said text amendment (hereinafter the "Windmill Text Amendment").

57. On or about October 9, 2003, the Zoning Board of Appeals published a public notice of the public hearing on the Windmill Text Amendment in the Rochelle News Leader in Rochelle, Illinois.

58. On or about November 4, 2003, the Zoning Board of Appeals conducted a public hearing on the Windmill Text Amendment.

59. On or about November 4,2003, the Zoning Board of Appeals issued a document entitled Findings of Fact and Recommendation of Ogle County Zoning Board of Appeals on the Windmill Text Amendment. A true and accurate copy of the Findings of Fact and Recommendation of Ogle County Zoning Board of Appeals is attached hereto as Exhibit H.

60. On or about November 18, 2003, the Ogle County Board of Commissioners enacted the Windmill Text Amendment. A true and accurate copy of the Windmill Text Amendment is attached hereto and incorporated herein as Exhibit I.

61. The Findings of Fact for the Windmill Text Amendment was not in accordance with Division 9, Section 9.07(G) of the Zoning Ordinance as the Findings of Fact for the Windmill Text Amendment did not contain:

A. Any findings of fact, evidence, or consideration that the proposed amendment will allow development that is compatible with existing uses and zoning of nearby property.

B. Any findings of fact, evidence, or

consideration that the County of Ogle and other service providers will be able to provide adequate public facilities and services to the property (including, but not necessarily limited to, schools, police and fire protection, roads and highways, water supply and sewage disposal), while maintaining adequate public facilities and levels of service to existing development.

C. Any findings of fact, evidence, or consideration that the proposed amendment will not result in significant adverse impacts on other property in the vicinity of the subject site or on the environment, including alr, noise, stormwater management, wildlife and natural resources.

D. Any findings of fact, evidence, or consideration that the subject property is suitable for the proposed zoning classification.

E. Any findings of fact, evidence, or consideration that the proposed zoning classification is consistent with the trend of development, if any, in the general area of the subject property including changes, if any, which have taken place since the day the property in question was placed in its present zoning classification.

F. Any findings of fact, evidence, or consideration that the proposed amendment is consistent with the public interest and not solely for the interest of the applicant, giving due consideration to the stated purpose and intent of the Amendatory Zoning Ordinance as set forth in Division 1 therein, the Land Evaluation and Site Assessment (LESA) findings (if applicable), and the recommendation(s) of the Ogle County Regional Planning Commission with respect to the Ogle County Amendatory Comprehensive Plan.

G. Any findings of fact, evidence, or consideration to the existing uses and zoning of nearby property.

H. Any findings of fact, evidence, or consideration to the extent to which property values are diminished by the particular zoning restrictions.

I. Any findings of fact, evidence, or consideration to the extent to which limitation or destruction of property values of plaintiff promotes the general health, safety and welfare.

J. Any findings of fact, evidence, or consideration to the relative gain to the public as compared to the hardship imposed upon plaintiff.

K. Any findings of fact, evidence, or

consideration to the suitability of the particular property for the purpose of which it is now zoned.

L. Any findings of fact, evidence, or consideration to the length of time that the property has been vacant as zoned considered in the context of land development in the area in which the property is located.

M. Any findings of fact, evidence, or consideration to the care with which the community has undertaken to plan its land use development.

N. Any findings of fact, evidence, or consideration to the evidence or lack of evidence of community need for the use proposed by the property owner.

62. As a result of the Windmill Text Amendment, Division 5, Section 5.0 I (C) ["AG-1" Agricultural District Special Uses] of the Zoning Ordinance currently provides that a wind energy conversion system may be allowed by a special use permit. A wind energy conversion system is a windmill that converts the kinetic energy of the wind into electricity (hereinafter "Wind Energy Conversion System").

63. On or about September 16, 2005, Baileyville applied for a special use permit with Ogle County for the installation of Commercial Wind

Energy Conversion Systems in Ogle County known as the Baileyville Wind Farm, including the construction of forty (40) Wind Energy Conversion Systems on approximately 5,296 acres of land, with each Wind Energy Conversion System being a Gamesa Model G87, 2 Megawatt turbine with a height of 395 feet to the tip of the blade and a rotor diameter of 285 feet (hereinafter the "Application"). A true and accurate copy of the Application is attached hereto and incorporated herein as Exhibit J. Exhibits to the Application have not been included in order to reduce the amount of paperwork filed herein.

64. Division 9, Section 9.08(B) [Special Uses: Application for Special Use Permit] of the Zoning Ordinance requires that the application for special use permit be filed upon the form and be accompanied by such information as shall be required by the Zoning Board of Appeals.

65. The application and instructions for a special use permit as provided by the Zoning Board of Appeals, as attached hereto and incorporated herein as Exhibit K, provides that the applicant include, amongst other information, the following items:

> A. The application must be signed by the owner of record of the property.
>
> B. The application shall include the correct names, addresses and percentage interest of all stockholders or shareholders owning an interest in excess of twenty percent (20%) of all outstanding stock of such corporation.

C. The application shall include names and addresses of all true and actual owners of a business entity doing business under an assumed name.

D. The application must state that the present zoning is in error.

E. That changing conditions warrant re-zoning.

66. The Application was not in accordance with the instructions for the application pursuant to Division 9, Section 9.08(B) because it:

A. Is signed only by Baileyville and not a single owner of record to any of the property subject to the special use permit.

B. Does not include the correct names, addresses and percentage interest of all stockholders or shareholders owning an interest in excess of twenty percent (20%) of all outstanding stock of such corporation.

C. Does not include names and addresses of all true and actual owners of a business entity doing business under an assumed name.

D. Does not state why the present zoning is in error.

E. Does not state the changing conditions which warrant re-zoning.

67. On or about October 10, 2005, the Zoning Board of Appeals caused the Ogle County Life Newspaper in Oregon, Illinois to publish a Notice of Hearing for the Application (hereinafter the "Published Notice"). A true and accurate copy of the Published Notice is attached hereto and incorporated herein as Exhibit L.

68. The Published Notice published was not in accordance with the requirements of 55 ILCS 5/5-12009.5 for the following reasons:

A. Pursuant to subsection (b)(i) of 55 ILCS 5/5-12009.5 the Public Notice did not contain the legal description of the property, the street address of the property, or any reference to any well-known landmark, highway road, thoroughfare or intersection.
B. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose that Baileyville was acting as agent for the applicable land holders who own the property for which the Special Use Permit was being requested.
C. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose Navitas as agent for Baileyville, where Navitas did in fact present itself as agent for Baileyville in the Public Hearing.
D. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, Navitas the Public Notice failed to disclose Navitas as agent for the applicable land holders who own the property for which the Special Use Permit was being requested, where Navitas did in fact present itself as an agent for the applicable land holders in the Public Hearing.
E. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all officers of Baileyville.

F. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all directors of Baileyville.

G. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all shareholders owning in excess of twenty percent (20%) of the outstanding shares of Baileyville wherein Baileyville is a wholly owned subsidiary of Navitas, Navitas is a seventy-seven percent (77%) owned subsidiary of Gamesa.

H. Pursuant to subsection (b)(v) of 55 ILCS 5/5-12009.5 the Public Notice failed to specify any partners, a joint venture, syndicate or association including the names and addresses of the partners.

I. Pursuant to subsection (b)(vi) of 55 ILCS 5/5-12009.5 the Public Notice failed to specify the proposed special use.

69. Upon information and belief, the Zoning Board of Appeals caused to send out a notice to all owners of any land adjacent to or immediately across the street, alley, or public right-of-way from the property proposed as a special use related to the Public Hearing on the Application (the "Owners Notice"). A true and accurate copy of the Owners Notice is attached hereto and incorporated herein as Exhibit M.

70. The Owners Notice was not in accordance with the requirements of 55 ILCS 5/5-12009.5 for the following reasons:

A. Pursuant to subsection (b)(i) of 55 ILCS 5/5-12009.5 the Public Notice did not contain the legal description of the property, the street address of the property, or any reference to any well-known landmark, highway road, thoroughfare or intersection.

B. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose that Baileyville was acting as agent for the applicable land holders who own the property for which the Special Use Permit was being requested.

C. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose Navitas as agent for Baileyville, where Navitas did in fact present itself as agent for Baileyville in the Public Heming.

D. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose Navitas as agent for the applicable land holders who own the property for which the Special Use Permit was being requested.

E. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all officers of Baileyville.

F. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all directors of Baileyville.

G. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all shareholders owning in excess of twenty percent (20%) of the outstanding shares of Baileyville wherein Baileyville is a wholly owned subsidiary of Navitas, Navitas is a seventy-seven percent (77%) owned subsidiary of Gamesa, and Gamesa is a wholly owned subsidiary of Gamesa Spain.

H. Pursuant to subsection (b)(v) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify any partners, a joint venture, syndicate or association including the names and addresses of the partners.

I. Pursuant to subsection (b)(vi) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the proposed special use.

71. On or about November 7,2005 through December 13, 2005, the Zoning Board of Appeals conducted a public hearing on the Application (hereinafter "Public Hearing").

72. At the Public Hearing, Navitas acted as agent for Baileyville.

73. During the Public Hearing on the Application, Plaintiff, as well as other constituents made several motions with regard to the Application, which the Zoning Board of Appeals either denied or refused to rule upon, as follows:

A. The Zoning Board of Appeals denied a written motion to continue the Public Hearing, requested because the Application contained over 900 pages, and the public had not been given a witness list or necessary documents in order to prepare for the Public Hearing.

B. The Zoning Board of Appeals refused and failed to rule upon a written motion and to dismiss the Application as defective because it was not signed by the owners of land subject to the proposed Special Use Permit.

C. The Zoning Board of Appeals refused and failed to rule upon an oral motion for failure to provide due process, as the public did not receive exhibits to be introduced into evidence, nor a list of witnesses and experts, nor given the subject matter of said witnesses and experts testimony prior thereto, thereby prohibiting the public from meaningfully preparing for cross-examination of Baileyville's witnesses and experts.

D. The Zoning Board of Appeals refused and failed to rule upon an oral motion to dismiss based upon the allegation that the Ogle County Board of Commissioners did not property authorize the Windmill Text Amendment where it did not follow the procedure set forth in the Zoning Ordinance in passing the Windmill Text Amendment.

E. The Zoning Board of Appeals refused and failed to rule upon an oral motion to dismiss the Application because the conditions proposed in the Zoning Board of Appeals staff report related to the property value guarantee, fire protection plan, and traffic control pattern were not available at the time of the Public Hearing.

F. The Zoning Board of Appeals refused and failed to rule upon a written Motion to Dismiss the Application because the Application was incomplete at the time the Public Hearing began.

74. During the Public Hearing on the Application, the Zoning Board of Appeals failed and refused to provide Plaintiff and other constituents with:

A. An Agenda.

B. A list of witnesses to be presented by Baileyville.

C. A list of expert witnesses, and a synopsis of their expertise and opinions.

D. Copies of exhibits to be introduced by Baileyville at the Public Hearing.

E. Copies of the Amendments to the Zoning Board of Appeals staff report prior to said report being entered into evidence.

F. A copy of the proposed Home Sellers Property Value Protection Plan.

75. Further, during the Public Hearing on the Application, the Zoning Board of Appeals refused a request by approximately ten (10) members of the general public to enter written comments prior to the close of the Public Hearing.

76. During the Public Hearing on the Application, the Zoning Board of Appeals:

A. Allowed Baileyville to enter evidence from a different governmental proceeding in a different state, namely before the Public Service Commission of Wisconsin, and the Plaintifl or other members of the public were not afforded their light to cross-examine said evidence.

B. Allowed Baileyville to enter evidence for various environmental studies, but as none of the authors of said studies were present, Plaintiff and other members of the public were not afforded their right to cross-examine said environmental studies.

77. The Zoning Board of Appeals denied due process to Plaintiff and other constituents at the Public Hearing on the Application for the aforementioned reasons.

78. At the Public Hearings, Baileyville failed to enter any evidence to support the Application and otherwise satisfy the standards as set forth in Division 9, Section 9.08(C) of the Zoning Ordinance for the following:

A. Pursuant to subsection (c)(1) of Division 9, Section 9.08 of the Zoning Ordinance related to public health, safety, comfort, and general welfare at large, Baileyville did not present any:

(i) medical experts, medical testimony, or medical evidence to support its claim that the special use would not be detrimental to the public health, safety, comfort and general welfare.

(ii) safety experts, safety testimony, or safety evidence to support its claim that the special use would not be detrimental to the public health, safety, comfort and general welfare, except for several bullet points cited in the Baileyville Exhibit I presented in the Public Hearing.

B. Pursuant to subsection (c)(2) of Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence related to the location or size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

C. Pursuant to subsection (c)(3) of Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence that the off-street parking and loading areas will be provided in accordance with the standards set forth in the Zoning Ordinance

D. Pursuant to subsection (c)(4) of Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence as to the drainage issues, particularly in relation to the Plaintiff's property.

E. Pursuant to subsection (c)(5), Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence that the Application was deemed essential or desirable to preserve and promote the public health, safety m1d general welfare of Ogle County.

F. Pursuant to subsection (c)(6), Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence that the proposed Application complied with all other provisions of the applicable district regulations.

79. At the Public Hearings, Baileyville entered flawed, incomplete, misleading, and contradictory evidence that does not support the fact that Baileyville has clearly established that the Application has met the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance for the following:

A. Pursuant to subsection (c)(1) of Division 9, Section 9.08 of the Zoning Ordinance related to unreasonable detriment value of the property in the neighborhood, Baileyville presented a critically flawed, inaccurate and misleading real estate expert who:

(i) was not a licensed appraiser under the Illinois Real Estate Appraisal License Act (225 ILCS 458/1-1, et seq);

(ii) was not trained in appropriate appraisal methodology and practices;

(iii) was not familiar with the Uniform Standards of Professional Appraisal Practices;

(iv) did not adhere to the Uniform Standards of Professional Appraisal Practices as required by Section 10-5 of the Illinois Real Estate Appraisal Licensing Act (225 ILCS 458/1 0-5);

(v) did not use the paired sales analysis methodology as prescribed by the Uniform Standards of Professional Appraisal Practices;

(vi) did not understand or had never used the paired sales analysis as prescribed in the Uniform Standards of Professional Appraisal Practices;

(vii) used a linear reduction methodology which is not an acceptable practice under the Uniform Standards of Professional Appraisal Practices;

(viii) skewed the results of his report by comparing property values in Ogle County with those in Palm Springs California which are exceedingly divergent comparisons;

(ix) failed to include parameters normally incorporated such as average days on the market, market inventory sold, and sales price as percentage of listing price;

(x) failed to do any analysis or comparison with land in Illinois or Ogle County;

(xi) is by trade an energy consultant and not a real estate appraiser expert; and

(xii) has never prepared a real estate property value analysis prior to this report.

B. The project manager for the Baileyville project testified that the average wake effect of a Wind Energy Conversion System as provided in Baileyville Exhibit 3 was 10 times the length of the rotor diameter. A true and accurate copy of the document labeled Baileyville Exhibit 3 is attached hereto and incorporated herein as Exhibit N.

C. A wind engineering specialist for Baileyville testified that:

(i) the average wake effect of a Wind Energy Conversion System is between 8 to 11 times the blade diameter and that the wind industry standard is 10 times the blade diameter.

(ii) that if two Wind Energy Conversion Systems were placed 880 feet apart (twice the setback as required by the Special Use Permit) the energy loss as a result of the wake effeet would be approximately five percent (5%).

(iii) that a five percent (5%) loss of efficiency in a Wind Energy Conversion System is a significant loss and over time would be a substantial loss of revenue from said Wind Energy Conversion System.

D. An engineer for Navitas and Gamesa stated that the Gamesa Model G87, 2 megawatt Wind Energy Conversion System is noticeably louder then the G80, 900 kilowatt Wind Energy Conversion System.

E. Presented a noise study related to the Gamesa Model G87 that the setback of 440 feet was in compliance with the Illinois Pollution Control Board regulations was misleading for the following reasons:

(i) a study was performed on a Gamesa Model G80, 900 kilowatt turbine which determined setback to a residence should be 705 feet.

(ii) the Gamesa Model G80 study was in error where it showed setback to residences where the setback should have been to property lines.

(iii) the setback for the smaller and quieter Oamesa Model 080 was 705 feet, when the setback for the larger and louder Oamesa Model 087 was allegedly in compliance at only 439 feet.

(iv) the study on the Oamesa Model 087 for Baileyville was not in accordance with the Illinois Pollution Control Board regulations as it contained violations of the setback for twenty-seven (27) residential dwellings.

F. Pursuant to subsection (c)(5) of Division 9, Section 9.08 of the Zoning Ordinance related to proposed uses that are not detrimental to the permitted developments and uses in the zoning district, Baileyville presented the critically flawed, inaccurate, and misleading real estate expert as provided in sub-paragraph A above.

G Pursuant to subsection (c)(5) of Division 9, Section 9.08 of the Zoning Ordinance related to proposed uses that can be developed and operated in a malmer that is visually compatible with the permitted uses in the surrounding area, Baileyville presented clitically flawed, inaccurate, and misleading real estate expert as provided in sub-paragraph A above.

H. Pursuant to subsection (c)(5) of Division 9, Section 9.08 of the Zoning Ordinance related to a proposed use that is deemed essential or desirable to preserve and promote the public health, safety, and general welfare of Ogle County, Baileyville presented critically flawed, inaccurate, and misleading real estate expert as provided in sub-paragraph A above.

80. During the Public Hearings, Plaintiff as well as other opponents of the Project, entered evidence into the record that demonstrated that Baileyville could not meet the standards set forth in 55 ILCS 5/5-12009.5(c) and Division 9, Section9.08(C) of the Zoning Ordinance for the following reasons:

A. A licensed real estate appraiser under 225 ILCS 458/1-1 et seq. who testified to the following:

(i) that he was familiar with the methodologies and practices of the Uniform Standards of Professional Appraisal Practices.

(ii) presented sales data comparison between Lee County (with a Wind Energy Conversion System) and Ogle County (does not yet have a Wind Energy Conversion System), which provides that:

a. average listing prices in Lee County are lower than Ogle

County.

b. average market time in Lee County is longer than Ogle County.

c. average sales prices in Lee County are lower than Ogle County.

d. property values in Lee County were negatively impacted by the Wind Energy Conversion System, particularly those closer to where the Wind Energy Conversion Systems were constructed.

e. that the average market time for the property in the area of the Wind Energy Conversion System in Lee County is three (3) times the average of Lee County as a whole.

(iii) the impact is not exclusive to residential property, but also effects agricultural properties.

(iv) the Special Use Permit would prohibit future adoptive and permitted uses of neighboring properties within two (2) miles.

(v) that the Application does not meet the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance.

B. Presented a wind energy expert who testified to the following:

(i) that the United States Land Atlas cites Ogle County as a Class 2 wind, when a Class 4 wind is the minimal wind necessary for a viable economic return on a Wind Energy Conversion System.

(ii) that Baileyville's noise study was not in compliance with the Illinois Pollution Control Board regulations.

(iii) that the noise profile of a 1.5 megawatt Nicon 82 Wind Energy Conversion System required a setback of 1200 feet, therefore Ogle County's setback of 440 on a larger and louder Wind Energy Conversion System is in error.

(iv) that the Ogle County setback of 440 is not in compliance with the Illinois Pollution Control Board.

(v) that a setback of 2500 feet (or approximately 10 times the rotor blade diameter) would be appropriate.

(vi) that there are health, safety, and environmental concems with the Wind Energy Conversion System, including:

a. shadow flicker.
b. wildlife disruption.
c. electromagnetic radiation.
d. radar interference.
e. crop dusting safety issues.
f. ice and blade throw issues.

C. Placed into evidence Paired Sales Analysis report conducted by a MAI appraiser that demonstrated empirical evidence that the placement of a Wind Energy Conversion

System near a property results in a significant decline of seventeen to twenty percent (17-20%) in property value. This study was done in Dodge County, Wisconsin.

D. Placed into evidence a University of Wisconsin survey conducted in Kawanee County where a Wind Energy Conversion System had been installed, that seventy-nine percent (79%) of residents would not buy or build a house within one (1) mile of the Wind Energy Conversion System and fifty-nine percent (59%) of residents would not buy or build a house within two (2) miles of a Wind Energy Conversion System.

E. Placed into evidence a Kawanee County Township Assessor study which demonstrated that sales prices declined twenty-six percent (26%) within one (1) mile of the Wind Energy Conversion System and eighteen percent (18%) between one (1) mile and two (2) miles of a Wind Energy Conversion System.

F. Placed into evidence a publication conducted in England which concluded that properties were devalued by as much as thirty percent (30%) when a Wind Energy Conversion System was placed nearby.

G. Placed into evidence articles by medical doctors identifying the health damages of a Wind Energy Conversion System.

H. Placed into evidence published studies by University Hospitals identifying the health damages of Wind Energy Conversion Systems.

I. Placed into evidence a study by National

Laboratories citing the health dangers of Wind Energy Conversion Systems.

J. Placed into evidence the Lincoln Township Government letter identifying the heath dangers of Wind Energy Conversion Systems.

K. Placed into evidence the National Safety Council publication citing health dangers of Wind Energy Conversion Systems.

L. Placed into evidence the National Wind Coordinating Committee published a handbook citing the health dangers of Wind Energy Conversion Systems and recommending much greater setbacks for Wind Energy Conversion Systems.

M. Placed into evidence the National Lightning Safety Council publication on safety concerns with Wind Energy Conversion Systems.

N. Placed into evidence the numerous articles on the electromagnetic dangers of Wind Energy Conversion Systems.

O. Placed into evidence the Boone County, Illinois Commissioners statement that setbacks less than 2,000 feet are unsafe.

81. On or about December 13,2005, the Zoning Board of Appeals issued Findings of Fact in favor of granting the Application. A true and accurate copy of the Findings of Fact are attached hereto and incorporated herein as Exhibit O.

82. The Findings of Fact on the Application as issued by the Zoning Board of Appeals did not contain sufficient findings of facts, evidence, or consideration to clearly establish:

A. That the proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or the public health, safety, morals, comfort, or general welfare at large.

B. That the location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to:

(i) The location, nature and height of building, structures, walls and fences on the site; and

(ii) The nature and extent of proposed landscaping and screening on the proposed site.

C. That off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations.

D. That adequate utilities, ingress/egress to the site, access roads, drainage, and other such necessary facilities have been or will be provided.

E. That the proposed use can be operated in a manner that is not detrimental to the permitted developments and uses in the zoning district; can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding mea; and is deemed essential or desirable to preserve and promote the public health, safety and general welfare of Ogle County.

F. That the proposed special use complies with all provisions of the applicable district regulations.

83. Baileyville entered as evidence at the Public Hearing a document labeled as Exhibit 3 which provides the general standard in the wind energy industry for the minimum distance between Wind Energy Conversion Systems or adjoining non-participating landowners is ten (10) times the rotor blade diameter.

84. The minimum set back to another Wind Energy Conversion Systems or adjoining non-participating property for the Gamesa model G87 under the general standard in the wind energy industry, as presented by Baileyville, would be 2,850 feet (285 foot rotor diameter x 10 times rotor blade diameter).

85. The minimum standard set back to another Wind Energy Conversion System or adjoining non-participating property under the Special Use Permit is 1.1 times the height of the Wind Energy Conversion System, in the case of the Gamesa model G87, or approximately 435 feet (395 height to tip of rotor blade x 1.1 times).

86. The proposed Wind Energy Conversion System on the Application would violate the set back standards as prescribed by the wind energy industry

and Baileyville's own exhibits and evidence such that the Wind Energy Conversion Systems are placed approximately the following distances from the Plaintiffs property:

A. The Wind Energy Conversion System on the Miller property would be approximately 1030 feet, thereby encroaching and trespassing upon 1820 feet of the Plaintiffs property.

B. The Wind Energy Conversion System on the Coffman property would be approximately 725 feet, thereby encroaching and trespassing upon 2125 feet of the Plaintiffs property.

C. The Wind Energy Conversion System on the Coffman property would be approximately 590 feet, thereby encroaching and trespassing upon 2260 feet of the Plaintiff s property.

D. The Wind Energy Conversion System on the Hundermark property would be approximately 885 feet, thereby encroaching and trespassing upon 1965 feet of the Plaintiffs property.

E. The Wind Energy Conversion System on the Hollewell property would be approximately 1180 feet, thereby encroaching and trespassing upon 1670 feet of the Plaintiffs property.

F. The Wind Energy Conversion System on the Borneman property would be approximately 885 feet, thereby encroaching and trespassing upon 1965 feet of the Plaintiff s property.

87. On or about December 20, 2005, the Ogle County Board of Commissioners authorized and

issued a Special Use Permit to Baileyville as Ordinance Number 07-05 SU (hereinafter "Special Use Permit"). A true and accurate copy of the Special Use Permit is attached hereto and incorporated herein as Exhibit P.

88. The Special Use Permit as enacted by the Ogle County Board of Commissioners is not in accordance with 55 ILCS 5/5-12009.5(c) as the Special Use Permit contains a condition for Payment in Lieu of Taxes, and said condition is not reasonable and necessary to meet the standards of Division 9, Section 9.08 of the Zoning Ordinance.

89. The Special Use Permit as enacted by the Ogle County Board of Commissioners is not in accordance with Division 9, Section 9.08(D) as the Special Use Permit contains a condition for Payment in Lieu of Taxes, and said condition is not a condition or restriction deemed necessary to secure the general objectives or to reduce injury to value of the property in the neighborhood.

90. Baileyville, Navitas, and Gamesa failed to clearly establish that the Application met the standards as established by Division 9, Section 9.08(C), subsections I through 6.

91. As a result of (i) Baileyville's failure to enter evidence supporting its Application, (ii) Baileyville's entry of flawed, incomplete, and misleading evidence, and (iii) the Plaintiff and other constituents entering evidence demonstrating the Application did not meet standards set forth in Division 9, Section 9.08(c) of the Zoning Ordinance, and (iv) the Zoning Board of Appeals having failed to make sufficient findings of fact to establish the

standards and elements of Division 9, Section 9.08(c) of the Zoning Ordinance, the Zoning Board of Appeals and Ogle County Board of Commissioners did not have sufficient evidence to clearly establish that the Special Use Permit meets the above-mentioned standards.

92. On or about December 20, 2005, the Ogle County Board of Commissioners passed and authorized the Home Sellers Property Value Protection Plan in conjunction with and as part of the Special Use Permit even though said Home Sellers Property Value Protection Plan was never provided to the public during the Public Hearing. Further the Zoning Board of Appeals was making legislative decisions regarding the Home Sellers Property Value Protection Plan during the finding of fact. A true and accurate copy of the Home Sellers Property Value Protection Plan is attached hereto as Exhibit Q.

COUNT I

DECLARATORY JUDGMENT AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS, BAILEYVILLE, NAVITAS, AND GAMESA

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count I for Declaratory Judgment.

93. Section 5/2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701) provides for the entry of a declaratory judgment where a real and

substantial controversy exists between paliies, including determinations of the construction of governmental regulations ordinances, and statutes.

94. A real and substantial controversy exists in regards to whether action taken by the Zoning Board of Appeals and the Ogle County Board of Commissioners were appropriate and legal with regard to the following:

A. Whether findings of fact on the Windmill Text Amendment were clearly established as required by Division 9, Section 9.07 of the Zoning Ordinance and whether the Windmill Text Amendment is therefore invalid, illegal, and void.

B. Whether the Application was in compliance with Division 9, Section 9.08(B) of the Zoning Ordinance, and whether the Application is therefore invalid, illegal, and void.

C. Whether the Published Notice for the Public Hearing was in compliance with 55 ILCS 5/5-12009.5, and whether the Published Notice is therefore invalid, illegal, and void.

D. Whether the Owners Notice for the Public Hearing was in compliance with 55 ILCS 5/5-12009.5, and whether the Owners Notice is therefore invalid, illegal, and void.'

E. Whether the public was afforded their due process rights at the Public Hearing, and whether the Public Hearing was therefore invalid, illegal, and void.

F. Whether the Findings of Fact clearly established that the Application met the standards set forth in Division 9, Section 9.08

of the Zoning Ordinance, and whether the findings of fact are therefore invalid, illegal, and void.

G. Whether the necessary standards of Division 9, Section 9.08 of the Zoning Ordinance were considered, and whether the Special Use Permit is therefore invalid, illegal, and void.

H. Whether Baileyville clearly established the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance, and whether the Special Use Permit is therefore invalid, illegal, and void.

I. Whether the Special Use Permit contains a condition for Payment in Lieu of Taxes which is not reasonably necessary to meet the standards as set forth in Division 9, Section 9.08(C) of the Zoning Ordinance and is therefore invalid, illegal, and void.

J. Whether the Special Use Permit contains a condition for Payment in Lieu of Taxes that is not deemed necessary to secure the general objectives or reduce injury to the value of property in the neighborhood, and is therefore invalid, illegal, and void.

K. Whether the Special Use Permit is in fact invalid, illegal, or void because the Windmill Text Amendment, Application, Published Notice, Owners Notice, or Findings of Fact are invalid, illegal, and void.

WHEREFORE, Plaintiff PATRICIA A. MUSCARELLO, hereby requests this honorable

Court to enter an Order finding the following:

A. That the necessary Findings of Fact were not clearly established with regard to the Windmill Text Amendment, that the Windmill Text Amendment is theretore invalid, illegal, and void; and that the Special Use Permit based upon the Windmill Text Amendment is also therefore invalid, illegal, and void.

B. That the Application was not in compliance with Division 9, Sections 9.08(B) and 9.08(C)(6) of the Zoning Ordinance, that said Application was therefore invalid, illegal, and void, and that the Special Use Permit based upon the Application is therefore invalid, illegal, and void.

C. That the Published Notice for the Public Hearing was not in compliance with 55 ILCS 5/5-12009.5, that said Published Notice was therefore invalid, illegal, and void; and that the Special Use Permit based upon the Published Notice is also therefore invalid, illegal, and void.

D. That the Owners Notice for the Public Hearing was not in compliance with 55 ILCS 5/5-12009.5, that said Owners Notice was therefore invalid, illegal, and void; and that the Special Use Permit based upon the Owners Notice is also therefore invalid, illegal, and void.

E. That the Zoning Board of Appeals failed to rule upon the motions by Plaintiff and other constituents at the Public Hearing, that the failure to rule was in violation of the Plaintiffs and other constituents due process rights; and that the Special Use Permit based upon the Public Hearing is also therefore invalid, illegal, and void.

F. That the Zoning Board of Appeals failed to make sufficient findings of fact that clearly establish that the Application met the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance; and that the Special Use Permit based upon those findings of fact were also therefore invalid, illegal and void.

G. That the Zoning Board of Appeals and the Ogle County Board of Commissioners failed to consider the necessary standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance; and that the Special Use Permit based upon those considerations is also therefore invalid, illegal, and void.

H. That Baileyville failed to clearly establish and prove that it met the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance; and that the Special Use Permit based upon that failure is also therefore invalid, illegal, and void.

I. That the Special Use Permit contains a condition which is not reasonably necessary under 55 ILCS 5/5-12009.5 to meet the standards as set fmih in Division 9, Section 9.08 of the Zoning Ordinance; and that the Special Use Permit is therefore invalid, illegal, and void.

J. That the Special Use Permit contains a condition that is not deemed necessary to secure the general obligations or reduce injury to the value of property in the neighborhood and is therefore invalid, illegal, and void.

K. For such other relief this court deems just and equitable.

COUNT II
ADMINISTRATIVE REVIEW PURSUANT TO 735 ILCS 5/101 et seq. AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS AND PARTIES OF RECORD

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count II for Administrative Review Pursuant to 735 ILCS 5/101, et. seq..

93. Section 5/5-12012 of the Illinois Counties Code (735 ILCS 5/5-12012) provides all final administrative decisions (as defined in Section 3-101 of the Code of Civil Procedure, 735 ILCS 5/3-101) of the board of appeals hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Laws.

94. The Zoning Board of Appeals and Ogle County Board of Commissioners are administrative agencies under the existing laws of the State of Illinois pursuant to 735 LCS 5/3-101.

95. The Public Hearing on the Application and resulting Findings of Fact are an administrative decision under the existing laws of the State of Illinois pursuant to 735 ILCS 5/3-101.

96. Plaintiff herein seeks an administrative

review of the Zoning Board of Appeals and Ogle County Board of Commissioners for the Windmill Text Amendment, Public Hearing, Findings of Fact, Special Use and Home Seller Property Value Protection Plan as a result of the following administrative defects:

A. With regard to the Windmill Text Amendment, the Zoning Board of Appeals and the Ogle County Board of Commissioners failed to issue findings of fact clearly establishing compliance with all the standards as set forth in Division 9, Section 9.07 of the Zoning Ordinance.

B. With regard to the Public Hearing, the Zoning Board of Appeals and Ogle County Board of Commissioners:

(i) refused and failed to comply with all the requirements set forth in Division 9, Section 9.08 of the Zoning Ordinance with regard to the Application.

(ii) refused and failed to comply with all the requirements set forth in 55 lLCS 5/5-12009.5 when issuing the Published Notice.

(iii) refused and failed to comply with all the requirements set forth in 551LCS 5/5-12009.5 when issuing the Owners Notice.

(iv) refused and failed to rule and act upon the Plaintiff and other constituents motions.

(v) refused and failed to provide Plaintiff and other constituents with

Baileyville's exhibits to the Application.

(vi) refused and failed to provide Plaintiff and other constituents with the names of Baileyville's witnesses and a synopsis of what the Baileyville witnesses would be testifying on.

(vii) refused and failed to provide Plaintiff and other constituents with the names of expert witnesses and a synopsis of what the expert witnesses would be testifying on.

(viii) refused and failed to afford Plaintiff and other constituents due process of law under Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(ix) refused and failed to afford Plaintiff and other constituents due process of law under Section 2 of Article 1 of the Constitution of the State of Illinois.

(x) refused and failed to give consideration to all the evidence entered by Plaintiff and other constituents which proved that Baileyville could clearly not establish that the Application met all of the standards of Division 9, Section 9.08 of the Zoning Ordinance.

C. With regard to the Findings of Fact, the Zoning Board of Appeals and Ogle County Board of Commissioners refused and failed to clearly establish that the application met all the standards of Division 9, Section 9.08 of the

Zoning Ordinance.

D. With regard to the Special Use Permit, the Zoning Board of Appeals and Ogle County Board of Commissioners:

(i) refused and failed to clearly establish that the Application met all of the standards of Division 9, Section 9.08 of the Zoning Ordinance.

(ii) refused and failed to deny the Special Use Permit when Baileyville failed to clearly establish that it had met all of the elements and requirements of Division 9, Section 9.08 of the Zoning Ordinance.

(iii) refused and failed to give consideration to the evidence entered by Plaintiff and other constituents that proved Baileyville could not clearly establish that the Application met all the standards and requirements of Division 9, Section 9.08 ofthe Zoning Ordinance.

(iv) granted a regulatory private inverse taking of Plaintiffs property under Article 1 of the Fourteenth Amendment to the Constitution of the United States.

(vi) granted a regulatory private inverse taking of Plaintiffs property under Sections 2 and 15 of the Constitution of the State of Illinois.

(vii) included a condition that is not reasonably necessary under 55 ILCS 5/5-12009.5(c) to meet the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance.

(viii) included a condition that is not deemed necessary to secure the general obligations to reduce injury to the value of property in the neighborhood under Division 9, Section 9.08 of the Zoning Ordinance.

E. With regard to the Home Sellers Property Value Protection Plan, the Zoning Board of Appeals and the Ogle County Board of Commissioners:

(i) refused and failed to include the Home Sellers Property Value Protection Plan or any documents related thereto in the Staff Report as prepared by the Zoning Board of Appeals.

(ii) refused and failed to present any evidence of the Home Sellers Property Value Protection Plan at the Public Hearing.

(iii) refused and failed to disclose to the Plaintiff or other constituents any details concerning the Home Sellers Property Value Protection Plan.

(iv) refused and failed to allow the Plaintiff or other constituents to cross-examine any evidence related to the Home Sellers Property Value Protection Plan.

(v) refused and failed to afford Plaintiff and other constituents due process of the law under Section I of the

Fourteenth Amendment to the Constitution of the United States.
(vi) refused and failed to afford Plaintiff and other constituents due process of the law under Section 2 of Article I of the Constitution of the State of Illinois.
(vii) refused and failed to afford Plaintiff and other constituents equal protection under the law under Section 1 of the Fourteenth Amendment to the Constitution ofthe United States.
(viii) refused and failed to afford Plaintiff and other constituents equal protection under the law under Section 2 of Article I of the Constitution of the State of Illinois.

97. The defects and errors as provided herein have materially affected the property rights of the Plaintiff, including a diminution of value of her prope1 1y and a denial of her right to the highest and best use thereof and have resulted in a substantial injustice to Plaintiff.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter an Order as follows:

A. Reversing the decision of the Zoning Board of Appeals or in the alternative to reverse and remand the decision to (i) take into account the evidence presented by Plaintiff and other constituents to the Special Use Permit, (ii) permit Plaintiff and other constituents due process under the law, and (iii) permit

Plaintiff and other constituents equal protection under the law.

B. To reverse the decision of the Ogle County Board of Commissioners or in the alternative to reverse and remand the decision to (i) take into account the evidence presented by Plaintiff and other constituents and require the Ogle County Board of Commissioners to comply with Division 9, Section 9.08 of the Zoning Ordinance, (ii) permit Plaintiff and other constituents due process under the law, and (iii) permit Plaintiff and other constituents equal protection under the law.

C. That an injunction enter against the Zoning Board of Appeals and the Ogle County Board of Commissioners from administering, enforcing, adopting, or otherwise infringing upon the property rights of the Plaintiff or other constituents, and to preserve the status quo pending this Administrative Review.

D. For such other relief this court deems just and equitable.

COUNT III

WRIT OF CERTIORARI AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, AND ZONING BOARD OF APPEALS IS PLEAD IN THE ALTERNATIVE OF COUNT I FOR DECLARATORY JUDGMENT AND COUNT II FOR ADMINISTRATIVE REVIEW

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs

1 through 92 of this Count III for Writ of Certiorari.

93. Plaintiff herein seeks a determination that the Zoning Board of Appeals and Ogle County Board of Commissioners acted illegally with respect to the Public Hearing, Findings of Fact, Special Use and Home Seller Property Value Protection Plan in each of the following manners:

A. With regard to the Windmill Text Amendment, the Zoning Board of Appeals and the Ogle County Board of Commissioners failed to issue findings of fact clearly establishing compliance with all the standards as set forth in Division 9, Section 9.07 of the Zoning Ordinance.

B. With regard to the Public Hearing, the Zoning Board of Appeals and Ogle County Board of Commissioners:

(i) refused and failed to comply with all the requirements set forth in Division 9, Section 9.08 of the Zoning Ordinance with regard to the Application.

(ii) refused and failed to comply with all the requirements set forth in 55 ILCS 5/5-12009.5 when issuing the Published Notice.

(iii) refused and failed to comply with all the requirements set forth in 55 ILCS 5/5-12009.5 when issuing the Owners Notice.

(iv) refused and failed to rule and act upon the Plaintiffs and other constituents motions.

(v) refused and failed to provide

Plaintiff's and other constituents with Baileyville's exhibits to the Application.

(vi) refused and failed to provide Plaintiff's and other constituents with the names of Baileyville's witnesses and a synopsis of what the Baileyville witnesses would be testifying on.

(vii) refused and failed to provide Plaintiff's and other constituents with the names of expert witnesses and a synopsis of what the expert witnesses would be testifying on.

(viii) refused and failed to afford Plaintiff and other constituents due process of law under Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(ix) refused and failed to afford Plaintiff and other constituents due process of law under Section 2 of Article 1 of the Constitution of the State of Illinois.

(x) refused and failed to give consideration to the evidence entered by Plaintiff and other constituents which proved that Baileyville could clearly not establish that the Application met all of the standards of Division 9, Section 9.08 of the Zoning Ordinance.

C. With regard to the Findings of Fact, the Zoning Board of Appeals and Ogle County Board of Commissioners refused and failed to clearly establish that the application met all the standards of Division 9, Section 9.08 of the

Zoning Ordinance.

D. With regard to the Special Use Permit, the Zoning Board of Appeals and Ogle County Board of Commissioners:

(i) refused and failed to clearly establish that the Application met all of the standards of Division 9, Section 9.08 of the Zoning Ordinance.

(ii) refused and failed to deny the Special Use Pemlit when Baileyville failed to clearly establish that it had met all of the elements and requirements of Division 9, Section 9.08 of the Zoning Ordinance.

(iii) refused and failed to give consideration to the evidence entered by Plaintiff and other members of the public that proved Baileyville could not clearly establish that the Application met the elements and requirements of Division 9, Section 9.08 of the Zoning Ordinance.

(iv) granted a regulatory private inverse taking of Plaintiffs property under Article 1 of the Fourteenth Amendment to the Constitution of the United States.

(vi) granted a regulatory private inverse taking of Plaintiffs property under Sections 2 and 15 of the Constitution of the State of Illinois.

(vii) included a condition that is not reasonably necessary under 55 ILCS 5/5-12009 .5(c) to meet all the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance.

(viii) included a condition that is not deemed necessary to secure the general obligations to reduce injury to the value of property in the neighborhood under Division 9, Section 9.08 of the Zoning Ordinance.

E. With regard to the Home Sellers Property Value Protection Plan, the Zoning Board of Appeals and the Ogle County Board of Commissioners:

(i) refused and failed to include the Home Sellers Property Value Protection Plan or any documents related thereto in the Staff Report as prepared by the Zoning Board of Appeals.

(ii) refused and failed to present any evidence of the Home Sellers Property Value Protection Plan at the Public Hearing.

(iii) refused and failed to disclose to the Plaintiff or other constituents any details concerning the Home Sellers Property Value Protection Plan.

(iv) refused and failed to allow the Plaintiff or other constituents to cross-examine any evidence related to the Home Sellers Property Value Protection Plan.

(v) refused and failed to afford Plaintiff and other constituents of the public due process of the law under Section 1 of the

Fourteenth Amendment to the Constitution of the United States.

(vi) refused and failed to afford Plaintiff and other constituents due process of the law under Section 2 of Article I of the Constitution of the State of Illinois.

(vii) refused and failed to afford Plaintiff and other constituents equal protection under the law under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(viii) refused and failed to afford Plaintiff and other constituents equal protection under the law under Section 2 of Article I of the Constitution of the State of Illinois

94. A Writ of Certiorari should issue and this honorable Court should review the final decision of the Zoning Board of Appeals and Ogle County Commissioners as those bodies acted illegally and Plaintiff has no direct appeal or other mode of direct review of the proceeding by the Zoning Board of Appeals or the Ogle County Board of Commissioners, nor is there any other adequate remedy of law available to Plaintiff.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to issue a Writ of Certiorari upon the Zoning Board of Appeals and the Ogle County Board of Commissioners to review the records to determine if the Zoning Board of Appeals and Ogle County Board of Commissioners acted illegally in the passage of the

Windmill Text Amendment, conducting the Public Hearing, issuing the Findings of Fact, passage of the Special Use Permit, passage of the Home Sellers Property Value Protection Plan, and for such other relief this court deems just and equitable.

COUNT IV

TAKINGS UNDER SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AGAINST OGLE COUNTY BOARD OF COMMISSIONERS AND ZONING BOARD OF APPEALS

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count IV for Takings under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

93. By virtue ofthe issuance of the Special Use Permit, the Zoning Board of Appeals and Ogle County Board of Commissioners have enacted a county governmental act that has unreasonable and illegally taken, injured and damaged the adjacent property owned by Plaintiff as the Special Use Permit fully encompasses and surrounds Plaintiff's property.

94. The taking, injury, and damage of Plaintiff's property by the Zoning Board of Appeals and the Ogle County Board of Commissioners was not for a public purpose, but rather for deriving private economic benefits for Baileyville, a private entity.

95. The taking, injury, and damage of Plaintiff's property will be severe and without just compensation to Plaintiff, in that Plaintiff now be:

(i) deprived of the full extent of the kinetic energy of the wind and air as it enters Plaintiff's property.
(ii) deprived of the full extent of the Accessory Use under Division 5, Section 5.01(N) of the Zoning Ordinance.
(iii) subject to the shadow flicker and reduction of light upon the property caused by the Wind Energy Conservation System.
(iv) subject to the severe noise caused by the Wind Energy Conservation System.
(v) subject to possible "ice throw" where ice will be physically thrown onto Plaintiff's property.
(v) subject to possible "blade throws" where a rotor blade is physically thrown onto Plaintiff's property.
(vi) subject to radar interference.
(vii) subject to cell phone interference.
(viii) subject to GPS interference.
(ix) subject to wireless communication interference.
(x) subject to television interference.
(xi) subject to higher chances of lightning damage.
(xii) subject to higher amounts of electromagnetic radiation.
(xiii) subject to damage by stray voltage; and
(ixx) prevented from crop dusting of the agricultural land.

96. The Special Use Permit is harsh, arbitrary, oppressive, prohibitory, and confiscatory upon Plaintiff's property.

97. The Special Use Permit constitutes a cloud on Plaintiffs title to said property.

98. The taking, injury, and damage to Plaintiffs property will unjustly, severely, materially, and substantially restrict, impair, limit, and deprive Plaintiff of many of the current uses of the property, as well as additional, new, future, higher, and better uses of Plaintiff's property.

99. The taking, injury, and damage to Plaintiffs property by the Zoning Board of Appeals and the Ogle County Board of Commissioners do not serve a public purpose or contribute to improve the general health, safety, and well being of the public, but rather serves to derive purely economic and monetary benefits to a private company, namely Baileyville.

100. The taking, injury, damage and deprivation to Plaintiff s property substantially devalues and decreases the fair market value of the property, valued by measure of present, prospective, and available uses of the property.

101. The taking, injury, and damage deprives Plaintiff of the highest and best use of said property.

102. The taking, injury, and damage to Plaintiffs property by the regulatory inverse private taking by the Zoning Board of Appeals and Ogle County Board of Commissioners for the benefit of Baileyville is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter a judgment that declares the Special Use Permit approved by the Zoning Board of Appeals and Ogle County Board of Appeals as invalid, illegal, unconstitutional, and void.

COUNT V

TAKINGS UNDER SECTIONS 2 AND 15 OF ARTICLE I OF THE CONSTITUTION OF THE STATE OF ILLINOIS AGAINST OGLE COUNTY BOARD OF COMMISSIONERS AND ZONING BOARD OF APPEALS

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count V for Takings under Sections 2 and 15 of Article 1 of the Constitution of the State of Illinois.

93-101.Plaintiff hereby adopts Paragraphs 93 through 101 of Count V Takings Under Section 1 of the Fourteenth Amendment to the Constitution of the United States as Paragraphs 93 through 101 of Count VI for Takings Under Sections 2 and 15 of Article I of the Constitution of the State of Illinois.

102. The taking, injury, and damage to Plaintiff's property by the regulatory inverse private taking by the Zoning Board of Appeals and the Ogle County Board of Commissioners for the benefit of Baileyville is in violation of Section 2 of Article I of the Constitution of the State of Illinois, which provides that no person shall be deprived of life, liberty, or property without due process of law.

103. The taking, injury, and damage to Plaintiffs property by the regulatory inverse private taking by the Zoning Board of Appeals and the Ogle County Board of Commissioners for the benefit of Baileyville is in violation of Section 15 of Article I of the Constitution of the State of Illinois, which prohibits the taking or damaging of private property without just compensation.

104. The taking, injury, and damage to Plaintiff's property by the regulatory inverse private taking by the Zoning Board of Appeals and the Ogle County Board of Commissioners constitutes a private taking of real property not for the benefit of the safety, health, and general welfare of the public in violation of Sections 2 and 15 of the Constitution of the State of Illinois.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter a judgment that declares the Special Use Permit approved by the Zoning Board of Appeals and Ogle County Board of Appeals as invalid, illegal, unconstitutional, and void.

COUNT VI

VIOLATION OF DUE PROCESS UNDER SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AGAINST OGLE COUNTY BOARD OF COMMISSIONERS AND ZONING BOARD OF APPEALS

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count VI for Violation of Due Process under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

93. In denying the Plaintiff and other members of the public their rights to due process during the Public Hearing and with the issuance of the Special Use Permit, the Zoning Board of Appeals and the Ogle County Board of Commissioners have violated Section 1 of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court enter a judgment that the conduct at the Public Hearing by the Zoning Board of Appeals and the issuance of the Special Use Permit approved by the Ogle County Board of Commissioners are in violation of Plaintiff's dues process and that the Public Hearing, and Special Use Permit are therefore invalid, illegal, unconstitutional and void.

COUNT VII

VIOLATION OF DUE PROCESS UNDER SECTION 2 OF ARTICLE 1 OF THE CONSTITUTION OF THE STATE OF ILLINOIS AGAINST OGLE COUNTY BOARD OF COMMISSIONERS AND ZONING BOARD OF APPEALS

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count VII for Violation of Due Process under Section 2 of Article I of the

Constitution of the State of Illinois.

93. In denying the Plaintiff and other members of the public their rights to due process during the Public Hearing and with the issuance of the Special Use Permit, the Zoning Board of Appeals and the Ogle County Board of Commissioners have violated Section 2 of Article I of the Constitution of the State of Illinois.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court enter a judgment that the conduct at the Public Hearing by the Zoning Board of Appeals and the issuance of the Special Use Permit approved by the Ogle County Board of Commissioners are in violation of Plaintiff's dues process and that the Public Hearing, and Special Use Permit are therefore invalid, illegal, unconstitutional and void.

COUNT VIII

VIOLATION OF EQUAL PROTECTION UNDER SECTION 1 OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS

1-92 Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count VIII for Violation of Equal Protection under Section 1 of the Fourteenth Amendment of the Constitution of the United States.

93. The Home Sellers Property Value

Protection Plan applies strictly to property owners which maintain an existing dwelling on their property within one (1) mile of a Wind Energy Conversion System.

94. The Home Sellers Property Value Protection Plan does not apply to owners of land who have commercial, business, retail, or agricultural purposes.

95. The Home Sellers Property Value Protection Plan grants greater property rights of those owning a dwelling over those owning land for commercial, business, retail, or agricultural purposes.

96. In denying certain property rights to owners of commercial, business, retail or agricultural land, that are otherwise granted to owners of land with a dwelling thereon, the Zoning Board of Appeals and the Ogle County Board of Commissioners have violated Section 1 of the Fourteenth Amendment of the Constitution of the United States.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter a judgment that declares the Special Use Permit approved by the Zoning Board of Appeals and Ogle County Board of Appeals as invalid, illegal, unconstitutional, and void.

COUNT IX

VIOLATION OF EQUAL PROTECTION UNDER SECTION 2 OF ARTICLE I OF THE CONSTITUTION OF THE STATE OF ILLINOIS AGAINST OGLE COUNTY BOARD OF

COMMISSIONERS, ZONING BOARD OF APPEALS, BAILEYVILLE, NAVITAS, AND GAMESA, AND ADJACENT PROPERTIES

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count IX for Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois.

93-95. Plaintiff hereby adopts Paragraphs 93 through 95 of Count VIII Violation of Equal Protection Under Section 1 of the Fourteenth Amendment of the Constitution of the United States as Paragraphs 93 through 95 of this Count IX for Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois.

96. In denying certain property rights of owners of commercial, business, retail or agricultural land, that are granted to owners of land with a dwelling thereon, the Zoning Board of Appeals and the Ogle County Board of Commissioners have violated Section 2 of Article I of the Constitution of the State of Illinois.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter a judgment that declares the Special Use Permit approved by the Zoning Board of Appeals and Ogle County Board of Appeals as invalid, illegal, unconstitutional, and void.

COUNT X

TRESPASS AGAINST OGLE COUNTY BOARD OF COMMISSIONS, ZONING BOARD OF APPEALS, ADJACENT PROPERTIES, BAILEYVILLE, NAVITAS & GAMESA

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count X for Trespass.

93. That by reason of construction of the Wind Energy Conversion System as authorized by the Special Use Permit issued by the Ogle County Board of Commissioners, Baileyville, Navitas, and Gamesa will build Wind Energy Conversion Systems on the Adjacent Properties completely surrounding and encompassing Plaintiff's property.

94. The construction of the Wind Energy Conversion System, by Baileyville, Navitas,Gamesa, and Adjacent Properties, will knowingly and intentionally cause the following trespasses upon the Plaintiff s property:

(i) deprived of the full extent of the kinetic energy of the wind and air as it enters Plaintiff s property.

(ii) deprived of the full extent of the Accessory Use under Division 5, Section 5.01 (N) of the Zoning Ordinance.

(iii) subject to severe noise in violation of the Illinois Pollution Control Board regulations.

(iv) subject to the shadow flicker and reduction of light upon the property caused by the Wind Energy Conservation System.

(v) subject to the severe noise caused by the

Wind Energy Conservation System.
(vi) subject to possible "ice throw" where ice will be physically thrown onto Plaintiff s property.
(vii) subject to possible "blade throws" where a rotor blade is physically thrown onto Plaintiffs property.
(viii) subject to radar interference.
(ix) subject to cell phone interference.
(x) subject to GPS interference.
(xi) subject to wireless communication interference.
(xii) subject to television interference.
(xiii) subject to higher chances of lightning damage.
(ixx) subject to higher amounts of electromagnetic radiation.
(xx) subject to damage by stray voltage; and
(xxi) prevented from crop dusting of the agricultural land.

95. As a result of the Special Use Permit, the Ogle County Board of Commissioners and the Zoning Board of Appeals have knowingly and intentionally authorized by ordinance the trespass upon the Plaintiffs property as set forth above.

96. The intentional trespass by Baileyville, Navitas, Gamesa, and Adjacent Properiies, upon the Plaintiffs property will unreasonably, and substantially restrict, impair, limit, and deprive Plaintiff of many of the current uses of the property, as well as additional, new, future, higher, and better uses of Plaintiff's property, and will unreasonably deny the Plaintiff the quiet enjoyment of the

property.

97. The intentional trespass by Baileyville, Navitas, Gamesa, and Adjacent Properties, upon Plaintiffs property will cause an unreasonable diminution of value of the property, an unreasonable restriction in the use of the property, and will otherwise unreasonably deprive the Plaintiff of the highest and best use of said property.

98. By reason of the intentional trespass of Plaintiff's property by Baileyville, Navitas, Gamesa, and Adjacent Properties, Plaintiff will suffer damages in excess of $500,00000, as a result of the depreciation of use and value of said property.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court enter a judgment against the Ogle County Board of Commissioners, Zoning Board of Appeals, Adjacent Properties, Baileville, Navitas, and Gamesa in an amount greater than $500,000.00 and for such other relief this court deems just and equitable.

COUNT XI

PUBLIC NUISANCE AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS, ADJACENT PROPERTIES, BAILEYVILLE, NAVITAS & GAMESA

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count XI for Public Nuisance.

93. That by reason of construction of the Wind Energy Conversion System as authorized by the

Special Use Permit issued by the Ogle County Board of Commissioners, Baileyville, Navitas, and Gamesa will build Wind Energy Conversion Systems on the Adjacent Properties completely surrounding and encompassing Plaintiff's property.

94. The construction of the Wind Energy Conversion System, by Baileyville, Navitas, Gamesa, and Adjacent Properties, will knowingly and intentionally cause the following substantial invasion, interference, annoyance, and nuisance upon Plaintiff s property:

(i) deprived of the full extent of the kinetic energy of the wind and air as it enters Plaintiffs property.

(ii) deprived of the full extent of the Accessory Use under Division 5, Section 5.01(N) of the Zoning Ordinance.

(iii) subject to severe noise in violation of the Illinois Pollution Control Board regulations.

(iv) subject to the shadow flicker and reduction of light upon the property caused by the Wind Energy Conservation System.

(v) subject to the severe noise caused by the Wind Energy Conservation System.

(vi) subject to possible "ice throw" where ice will be physically thrown onto Plaintiff's property.

(vii) subject to possible "blade throws" where a rotor blade is physically thrown onto Plaintiff's property.

(viii) subject to radar interference.

(ix) subject to cell phone interference.

(x) subject to GPS interference.

(xi) subject to wireless communication interference.

(xii) subject to television interference.

(xiii) subject to higher chances of lightning damage.

(ixx) subject to higher amounts of electromagnetic radiation.

(xx) subject to damage by stray voltage; and

(xxi) prevented from crop dusting of the agricultural land.

95. As a result of the Special Use Permit, the Ogle County Board of Commissioners and the Zoning Board of Appeals have knowingly and intentionally authorized by ordinance the substantial invasion, interference, annoyance and nuisance upon the Plaintiffs property as set forth above.

96. The intentional and substantial invasion, interference, annoyance, and nuisance by Baileyville, Navitas, Gamesa, and Adjacent Properties, upon the Plaintiffs property will unreasonably deny substantially restrict, impair, limit, and deprive Plaintiff of many of the current uses of the property, as well as additional, new, future, higher, and better uses of Plaintiff s property, and will unreasonably deny the Plaintiff the quiet enjoyment of the property.

97. The intentional and substantial invasion, interference, annoyance, and nuisance by Baileyville, Navitas, Gamesa, and Adjacent Properties, upon Plaintiffs property will cause an unreasonable diminution of value of the property, an unreasonable restriction in the use of the property, and will otherwise deprive the Plaintiff of the highest and

best use of said property.

98. By reason of the and substantial invasion, interference, annoyance, and nuisance of Plaintiff's property by Baileyville, Navitas, Gamesa, and Adjacent Properties, Plaintiff will suffered damages in excess of $500,000.00, which results in the depreciation of use and value of said property.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court enter a judgment against the Ogle County Board of Commissioners, Zoning Board of Appeals, Adjacent Properties, Baileville, Navitas, and Gamesa in an amount greater than $500,000.00 and for such other relief this court deems just and equitable.

COUNT XII

INJUNCTIVE RELIEF AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS, ADJACENT PROPERTIES, BAILEYVILLE, NAVITAS AND GAMESA

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count XII for Injunctive Relief.

93-98. Plaintiff hereby adopts Paragraphs 93 through 98 of Count X for Trespass, as Paragraphs 93 through 98 of this Count XII for Injunctive Relief.

99-105. Plaintiff hereby adopts Paragraphs 93 through 98 of Count XI for Public Nuisance, as Paragraphs 99 through 105 of this Count XII for Injunctive Relief.

106. Plaintiff has a clear, ascertainable and

protective right to (i) not be deprived of property without due process of law, (ii) not be deprived of equal protection, (iii) be free of unreasonable trespass upon its property, and (iv) be free of substantial nuisance upon its property.

107. Plaintiff has no remedy at law to compensate for its loss of due process, under the law, equal protection under the law, unconstitutional taking under the law, trespass upon its property and substantial interference, annoyance, and nuisance.

108. Irreparable injury will result to Plaintiff's property if the Wind Energy Conversion System as authorized by the Special Use Permit are built.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter a permanent injunction against:

A. The Ogle County Board of Commissioners and the Zoning Board of Appeals from administering, enforcing, or adopting the Special Use Permit or otherwise infringing upon the property rights of Plaintiff.

B. Baileyville, Navitas, Gamesa, and Adjacent Properties from building a Wind Energy Conversion System on the property adjacent to Plaintiff s property, or otherwise infringing upon the property rights of Plaintiff.

C. For such other relief this court deems just and equitable.

Respectfully Submitted:

DENKER & MUSCARELLO

By: s/Charles V. Muscarello
One of the Plaintiffs attomeys

CHARLES V. MUSCARELLO
Denker & Muscarello, LLC
4N701 School Road
St. Charles, Illinois 60175
Telephone: (630) 513-9191
Facsimile: (630) 524-9146

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION

Case No. 06 C 50017

Honorable Philip G. Reinhard

Magistrate P. Michael Mahoney

PATRICIA A. MUSCARELLO,)
a citizen of the State of Arizona,)
Plaintiff,)
)
v.)
)
OGLE COUNTY BOARD OF)
COMMISSIONERS, an Illinois municipal)
Government and a)
citizen of the State of Illinois,)
BETTY GOCKEN, Chairman of the Ogle)
County Board of Commissioners)
and a citizen of the State of Illinois,)
OGLE COUNTY ZONING BOARD)
OF APPEALS, a citizen of the)
State of Illinois,)
BRUCE MCKINNEY,Chairman of Zoning)
Board of Appeals and a citizen)
of the State of Illinois,)
MICHAEL REIBLE, Planning and Zoning)
Administrator and a citizen)
of the State of Illinois,)

BAILEYVILLE WIND FARMS, LLC,)
a Minnesota limited liability company)
and a citizen of the State of Minnesota,)
NAVITAS ENERGY, INC., a Minnesota)
corporation and a citizen)
of the State of Minnesota, GAMESA)
CORPORACION TECNOLOGICA, S.A., a)
Spanish Corporation and a citizen of the)
Country of Spain, RALPH AND SHIRLEY)
COFFMAN, citizens of the State of Illinois,)
WAVA M. SCHNEIDERMAN,)
a citizen of the State of Illinois and)
RAYMOND I. MILLER, a)
Citizen of the State of Kansas, as Successor)
Trustees of the Eunice Miller Trust, LYLE)
HUNDERTMARK, MARK AND JODIE)
HUNDERTMARK, citizens of the State of)
Illinois, LEIGH HOLLEWELL, GARY)
HOLLEWELL, DORIS HOLLEWELL,)
citizens of the State of Illinois, ROBERT G.)
BORNEMAN, a citizen of the State)
of Illinois, STEVEN LUNDGREN,)
a citizen of the State of Illinois,)
JOHN DANIS, a citizen of the State)
of Illinois, CHRIS FILLIPS, a citizen of the)
State of Illinois, JULIE MENNANGA,)
a citizen of the State of Illinois,)
JOYCE AND RANDALL STEINBECK,)
citizens of the State of Illinois, STEVE)
LEEK, a citizen of the State of Illinois,)
MARY ROSE KRUPA, a citizen of the State)
of Illinois, RICK LOTT, a citizen of the)
State of Illinois, HARVEY BOLEN,)

a citizen of the State of Illinois, REBECCA)
SHURTLEFF, a citizen of the State)
of Illinois, JOSHUA BOLEN, a citizen of the)
State of Illinois, JIM HUFF, a)
citizen of the State of Illinois, DEBBIE)
STEINBACH, a citizen of the State)
of Illinois, GARRETT LEEK, a citizen of)
the State of Illinois, BRENT BACH,)
a citizen of the State of Illinois,)
DAN BUSKOHL, a citizen of the State)
of Illinois, and JOE KERWIN, a citizen of)
the State of Illinois PAUL EBERTH, a)
citizen of the State of Minnesota, GEORGE)
J. STERZINGER, a citizen of the District)
of Columbia, CHRISTOPHER NUCKOLS,)
a citizen of the State of Minnesota,)
TODD WEEGENS, a citizen of the State)
of Illinois, BARRY KLINGER, a)
citizen of the State of Illinois, THOMAS E.)
HEWSON, JR., a citizen of the State)
of Virginia, MICHAEL MCCANN,)
a citizen of the State of Illinois,)
RANDY PALS, a citizen of the State of)
Illinois, RON KERN, a citizen of the State of)
Illinois, JACK THEDEN, a citizen)
of the State of Illinois, ELDRED ROGERS,)
a citizen of the State of Illinois,)
JOSE CALVO, a citizen of the)
State of Pennsylvania, DENNIS)
CRADDOCK, a citizen of the State of Illinois,)
ELMER RHODES, a citizen of the State)
of Illinois, and MARCO J. MUSCARELLO,)
a citizen of the State of Illinois,)

Defendants.)

PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW AND EQUITY

Plaintiff, PATRICIA A. MUSCARELLO (hereinafter "Plaintiff") a citizen of the State of Arizona, by and through her attorneys DENKER & MUSCARELLO, LLC, in support of her Second Amended Complaint for (I) Declaratory Judgment, (II) Administrative Review, (III) Writ of Certiorari, (IV) Reserved, (V) Takings under Sections 2 and 15 of Article I of the Constitution of the State of Illinois, (VI) Reserved, (VII) Violation of Due Process under Section 2 of Article I of the Constitution of the State of Illinois, (VIII) Reserved, (IX) Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois, (X) Trespass, and (XI) Public Nuisance and (XII) Injunctive Relief against OGLE COUNTY BOARD OF COMMISSIONERS, an Illinois county government and citizen of the State of Illinois, BETTY GOCKEN, a citizen of the State of Illinois and Chairman of the Ogle County Board of Commissioners (Ogle County Board of Commissioners and Betty Gocken herein collectively "Ogle County Board of Commissioners"), OGLE COUNTY ZONING BOARD OF APPEALS, an Illinois County government and a citizen of the State of Illinois, BRUCE MCKINNEY, a citizen of the State of Illinois and Chairman of the Zoning Board of Appeals, MICHAEL REIBEL, a citizen of the State of Illinois and Planning and Zoning

Administrator (Zoning Board of Appeals, Bruce McKinney, and Michael Reibel herein collectively "Zoning Board of Appeals"), BAILEYVILLE WIND FARMS, LLC, a limited liability company formed under the laws of Minnesota and a citizen of the State of Minnesota (hereinafter "Baileyville"), NAVITAS ENERGY, INC., a corporation formed under the laws of Minnesota and a citizen of the State of Minnesota (hereinafter "Navitas"), GAMESA CORPORACION TECNOLOGICA, S.A., a corporation formed under the laws of Spain and a citizen of Spain (hereinafter "Gamesa"), RALPH AND SHIRLEY COFFMAN, citizens of the State of Illinois (hereinafter "Coffmans"),
WAVA M. SCHNEIDERMAN, a citizen of the State of Illinois and RAYMOND I. MILLER, a Citizen of the State of Kansas, as Successor Trustees of the Eunice Miller Trust (hereinafter "Miller Trust"), LYLE HUNDERTMARK, MARK HUNDERTMARK, AND JODIE HUNDERTMARK, citizens of the State of Illinois (hereinafter "Hundertmarks"), LEIGH HOLLEWELL, GARY HOLLEWELL, AND DORIS HOLLEWELL, citizens of the State of Illinois (hereinafter "Hollewells"), and ROBERT G. BORNEMAN, a citizen of the State of Illinois (hereinafter "Borneman") (collectively, Coffman, Miller Trust, Hundertmarks, Hollewells and Borenman shall hereinafter be referred to as "Adjacent Properties"), STEVEN LUNDGREN, a citizen of the State of Illinois (hereinafter "Lundgren"), JOHN DANIS, a citizen of the State of Illinois (hereinafter "Danis"), CHRIS FILLIPS, a citizen of the State of Illinois (hereinafter "Fillips"),

JULIE MENNANGA, a citizen of the State of Illinois (hereinafter "Mennanga"), JOYCE AND RANDALL STEINBECK, citizens of the State of Illinois (hereinafter "Steinbecks"), STEVE LEEK, a citizen of the State of Illinois (hereinafter "S. Leek"), MARY ROSE KRUPA, a citizen of the State of Illinois (hereinafter "Krupa"), RICK LOTT, a citizen of the State of Illinois (hereinafter "Lott"), HARVEY BOLEN, a citizen of the State of Illinois (hereinafter "H. Bolen"), REBECCA SHURTLEFF, a citizen of the State of Illinois (hereinafter "Shurtleff"), JOSHUA BOLEN, an Illinois Resident (hereinafter "J. Bolen"), JIM HUFF, a citizen of the State of Illinois (hereinafter "Huff"), DEBBIE STEINBACH, a citizen of the State of Illinois (hereinafter "Steinbach"), GARRETT LEEK, a citizen of the State of Illinois (hereinafter "G. Leek"), BRENT BACH, a citizen of the State of Illinois (hereinafter "Bach"), DAN BUSKOHL, a citizen of the State of Illinois (hereinafter "Buskohl"), JOE KERWIN, a citizen of the State of Illinois (hereinafter "Kerwin"), PAUL EBERTH, a citizen of the State of Minnesota (hereinafter "Eberth"), GEORGE J. STERZINGER, a citizen of the District of Columbia (hereinafter "Sterzinger"), CHRISTOPHER NUCKOLS, a citizen of the State of Minnesota (hereinafter "Nuckols"), TODD WEEGENS, a citizen of the State of Illinois (hereinafter "Weegens"), BARRY KLINGER, a citizen of the State of Illinois (hereinafter "Klinger"), THOMAS E. HEWSON, JR., a citizen of the State of Virginia (hereinafter "Hewson"), MICHAEL MCCANN, a citizen of the State of Illinois (hereinafter "McCann"), RANDY PALS, a citizen of the State of Illinois (hereinafter "Pals"), RON KERN, a citizen of the State of Illinois (hereinafter "Kern"), JACK THEDEN, a citizen of the State of Illinois (hereinafter "Theden"), ELDRED ROGERS, a citizen of the State of Illinois (hereinafter "Rogers"), JOSE CALVO, a citizen of the State of Pennsylvania (hereinafter "Calvo"), DENNIS CRADDOCK, a citizen of the State of Illinois (hereinafter "Craddock"), ELMER RHODES, a citizen of the State of Illinois (hereinafter "Rhodes"), and MARCO J. MUSCARELLO, a citizen of the State of Illinois (hereinafter "Muscarello") (Lundgren, Danis, Fillips, Mennanga, Steinbecks, S. Leek, Krupa, Lott, H. Bolen, Shurtleff, J. Bolen, Huff, Steinbach, G. Leek, Bach, Buskohl, Kerwin, Eberth, Sterzinger, Nuckols, Weegens, Klinger, Hewson, McCann, Pals, Kern, Theden, Rogers, Calvo, Craddock, Rhodes, and Muscarello collectively hereinafter "Parties of Record"), states as follows. Allegations made on belief are premised on the belief that the same are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

THE PARTIES

1. Plaintiff, a citizen of the State of Arizona, owns a 240 acre parcel of property located within the State of Illinois, County of Ogle, under Parcel Identification Numbers 03-10-100-003 and 03-07-300-004, and legally described as provided in Exhibit A attached hereto and incorporated herein. In further support of Plaintiff's citizenship in the

State of Arizona, Plaintiff further states:

A. On or about December 15, 2001, Plaintiff moved her state of permanent residence from Illinois to Arizona and has intended to remain domiciled in Arizona ever since.

B. Plaintiff resides at 9225 N. Crimson Canyon, Fountain Hills, Arizona 85268.

C. On December 23, 2001, Plaintiff registered to vote in the State of Arizona and since December 23, 2001, Plaintiff has taken no action to vote, or register to vote in the State of Illinois.

D. On or about January 30, 2002, Plaintiff obtained a driver's license in the State of Arizona and Plaintiff's driver's license was subsequently cancelled by the State of Arizona and Plaintiff's Illinois driver's license originally expired on April 30, 2001. Plaintiff did receive a sticker to place on her Illinois driver's license on or about April 30, 2001, extending her expiration date until April 30, 2005. Plaintiff has not applied or re-applied to obtain an Illinois driver's license since that time.

E. Beginning in the year 2002, the State of Arizona was sufficiently convinced that Plaintiff was a resident of the State of Arizona such that Plaintiff was able to enroll her son, John Peter Muscarello, as an Arizona resident at Arizona State University for the years 2002, 2003, 2004, and 2005.

F. Plaintiff's address at 9225 N. Crimson

Canyon, Fountain Hills, Arizona is listed with Medicare and Social Security is her primary residence and Plaintiff's Social Security checks are directly deposited into Plaintiff's Arizona bank account in Fountain Hills, Arizona.

G. Although Plaintiff does own a home in the State of Illinois and visits her children in the State of Illinois several times per year, Plaintiff spends the majority of the year (more than seven (7) months) in the State of Arizona and Plaintiff's intention to remain a resident and domiciled in the State of Arizona and no other state.

H. The Ogle County Zoning Board of Appeals sent notices related to the Special Use Application filed by Baileyville which lists Plaintiff as an owner of property in Ogle County, showing Plaintiff's address as 9225 N. Crimson Canyon, Fountain Hills, Arizona.

I. The Special Use Application filed by Baileyville shows Plaintiff's residential address of 9225 N. Crimson Canyon, Fountain Hills, Arizona.

J. Plaintiff has become and remains a resident of and domiciled in the State of Arizona even though Plaintiff's husband, Marco J. Muscarello has remained a citizen of and resides in the State of Illinois.

K. It is Plaintiff's intention to remain a citizen of and domiciled in the State of Arizona, and Plaintiff has no plans to change citizenship or domicile from the State of Arizona any time in the future.

2. Defendant, Ogle County Board of Commissioners, is a county government authorized under the existing laws of the State of Illinois and has an address located at 4th and Washington Streets, Oregon, Illinois. Specifically, the Ogle County Board of Commissioners is authorized under the Illinois Counties Code (55 ILCS 1/1000 et. seq.) The Ogle County Board of Commissioners is a citizen of the State of Illinois.

3. Betty Gocken, a citizen of the State of Illinois and Chairman of the Ogle County Board of Commissioners, resides at 14986 E. Lindenwood Road, Lindenwood, Illinois.

4. Zoning Board of Appeals, is a zoning board authorized by Ogle County Board of Commissioners and the existing laws of the State of Illinois. The Zoning Board of Appeals has an address of 911 W. Pines Road, Oregon, Illinois. The Zoning Board of Appeals is a citizen of the State of Illinois.

5. Bruce McKinney, a citizen of the State of Illinois and the Chairman of the Zoning Board of Appeals, resides at 1406 Brookside Drive, Rochelle, Illinois.

6. Michael Reibel, a citizen of the State of Illinois and the Planning and Zoning Administrator for Ogle County and resides at 4317 E. Ridgeview Lane, Byron, Illinois.

7. Baileyville is a limited liability company, organized under the existing laws of the State of Minnesota and has a registered office in Minnesota

located at 3001 Broadway Street NE, Suite 695, Minneapolis, Minnesota 55413. Baileyville is registered as a foreign corporation under the existing laws of the State of Illinois with a registered office located at 208 S. LaSalle Street, Suite 814, Chicago, Illinois. Baileyville's principal place of business is in Minnesota and Baileyville is a citizen of the State of Minnesota. Alternatively, even if Baileyville's principal place of business is in and is a citizen of the State of Illinois, Baileyville is still not a citizen of the State of Arizona.

8. Upon information and belief, Baileyville has at all times material to the allegations contained herein been a wholly owned subsidiary of Navitas, as Navitas is the sole shareholder, member, and owner, as the case may be, of Baileyville, and further maintains sole control of management and affairs of Baileyville.

9. Navitas is a corporation organized under the existing laws of the State of Minnesota and has a registered office in Minnesota located at 3001 Broadway Street, NE, Suite 695, Minneapolis, Minnesota. Navitas is not registered as a foreign corporation within the State of Illinois. Navitas' principal place of business is in Minnesota. Navitas is a citizen of the State of Minnesota.

10. Upon information and belief Gamesa is a seventy-seven percent (77%) owner of Navitas and maintains control of management and affairs of Navitas.

11. Upon information and belief, Gamesa is corporation organized under the existing laws of the Country of Spain and has a registered office in Spain

of Vitoria, Portal de Gamarra 40, Espana, and a headquarters address of Plza Pablo Ruiz Picasso, 1 Edif. Torre Picazzo, Plta 24, 28020, Madrid, Espana. Gamesa's principal place of business is in the Country of Spain. Gamesa is a citizen of the Country of Spain.

12. The Coffmans, citizens of the State of Illinois, are the owners of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the North and West of Plaintiff, with Parcel Identification Numbers of 02-12-400-003 and 03-07-300-003. The legal description of said parcels are attached hereto and incorporated herein as Exhibit B. The Coffmans reside at 9211 W. Brush Road, German Valley, Illinois.

13. The Miller Trust is the owner of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the West of Plaintiff, with a Parcel Identification Number of 02-13-200-003. The legal description of the parcel is attached hereto and incorporated herein as Exhibit C1. The parcel was conveyed into the Miller Trust by a Warranty Deed in Trust recorded on March 16, 1992 as Document No. 9203266, and recorded again on February 7, 2002 as Document No. 0202054 ("Deed in Trust"). A true and accurate copy of the Deed in Trust is attached hereto and incorporated herein as Exhibit C2. Under the Deed in Trust, Eunice Miller was the original trustee of the Eunice Miller Trust with her two (2) children namely her daughter Wava M. Schniederman ("Wava") and her son Raymond I. Miller ("Raymond") as successor trustees. Eunice Miller died in or about 1995. Wava and Raymond

are therefore the successor trustees under the terms of the Deed in Trust. Wava resides at 5090 S. Rock City Boulevard, German Valley, Illinois and is therefore a citizen of the State of Illinois. Raymond resides at 7333 Frazer Street, Wichita, Kansas 67212 and is therefore a citizen of the State of Kansas. Neither Wava nor Raymond are citizens of the State of Arizona.

14. The Hundertmarks, citizens of the State of Illinois are the owners of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the North and East of Plaintiff, with a Parcel Identification Number of 03-07-400-004. The legal description of the parcel is attached hereto and incorporated herein as Exhibit D. The Hundertmarks reside at 9125 E. Edwardsville Road, German Valley, Illinois.

15. The Hollewells, citizens of the State of Illinois, are the owners of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the East of Plaintiff, with a Parcel Identification Number of 03-18-200-001. The legal description of the parcel is attached hereto and incorporated herein as Exhibit E. The Hollewells reside at 12009 N. Adeline Road, German Valley, Illinois.

16. Borneman, a citizen of the State of Illinois, is the owner of a parcel of land located in the State of Illinois, County of Ogle, immediately adjacent to the South and East of Plaintiff, with a Parcel Identification Number of 03-18-400-001. The legal Description of the parcel is attached hereto and incorporated herein as Exhibit F. Borneman resides at 6679 Illinois Route 72, Leaf River, Illinois.

17. Lundgren, a citizen of the State of Illinois, resides at 10534 Rock City Road, German Valley, Illinois.

18. Danis, a citizen of the State of Illinois, resides at 10534 Rock City Road, German Valley, Illinois.

19. Fillips, a citizen of the State of Illinois, resides at 10365 Leaf River Road, Leaf River, Illinois

20. Mennanga, a citizen of the State of Illinois, resides at 16989 Comly Road, Pecatonica, Illinois.

21. Steinbach, a citizen of the State of Illinois, resides at 6163 E. Monague Road, German Valley, Illinois.

22. Steinbecks, citizens of the State of Illinois, reside at 9770 W. Brush Road, German Valley, Illinois.

23. Krupa, a citizen of the State of Illinois, with a mailing address of P.O. Box 121, Leaf River, Illinois.

24. Lott, a citizen of the State of Illinois, resides at 11035 N. Adeline Road, German Valley, Illinois.

25. H. Bolen, a citizen of the State of Illinois, resides at 10369 N. Rock City Road, German Valley, Illinois.

26. Shurtleff, a citizen of the State of Illinois, resides at 9805 N. Rock City Road, German Valley, Illinois.

27. J. Bolen, a citizen of the State of Illinois, resides at 10369 N. Rick City Road, German Valley, Illinois.

28. Huff, a citizen of the State of Illinois, resides at 9791 Brush Road, German Valley, Illinois.

29. Leek, a citizen of the State of Illinois, resides at 7380 Montague Road, German Valley, Illinois.

30. Bach, a citizen of the State of Illinois, resides

at 10753 N. Adeline Road, German Valley, Illinois.

31. Buskohl, a citizen of the State of Illinois, resides at 6848 W. Adeline Road, Leaf River, Illinois.

32. Kerwin, a citizen of the State of Illinois, resides at 11920 N. Adeline Road, German Valley, Illinois.

33. Upon information and believe, Eberth is a citizen of Minnesota with a mailing address of 3001 Broadway Street, NE, Suite 695, Minneapolis, Minnesota.

34. Upon information and belief, Sterzinger is a citizen of the District of Columbia with a mailing address of 1612 K Street, Washington, DC.

35. Upon information and belief, Nuckols is a citizen of Minnesota with a mailing address of 3001 Broadway Street, NE, Suite 695, Minneapolis, Minnesota.

36. Weegens, a citizen of the State of Illinois, resides at 1752 Highland Drive, Freeport, Illinois.

37. Upon information and belief Klinger is a citizen of Illinois with a mailing address of 240 W. Main Street, Compton, Illinois.

38. Upon information and belief, Hewson is a citizen of Virginia with a mailing address of 1901 N. Moore Street, Suite 1200, Arlington, Virginia.

39. McCann is a citizen of the State of Illinois with a mailing address of 820 Orleans Street, Suite 200, Chicago, Illinois

40. Pals, a citizen of the State of Illinois, resides at 5307 W. Montague Road, German Valley, Illinois

41. Kern, a citizen of the State of Illinois, resides at 5282 W. Townline Road, Leaf River, Illinois.

42. Theden, a citizen of the State of Illinois,

resides at 4389 W. Otter Road, Leaf River, Illinois.

43. Rogers, a citizen of the State of Illinois, resides at 3330 Chicago Road, Paw Paw, Illinois.

44. Upon information and belief, Calvo is a citizen of Pennsylvania with a mailing address of 111 S. 15th Street, Philadelphia, Pennsylvania.

45. Craddock, a citizen of the State of Illinois, resides at 1062 Bingham Road, Stewart, Illinois.

46. Rhodes, a citizen of the State of Illinois, resides at 896 Bingham Road, Stewart, Illinois

47. Muscarello, a citizen of the State of Illinois, resides at 38W386 Burr Oak Lane, St. Charles, Illinois. Muscarello is Plaintiff's husband. Muscarello was named as a defendant in this cause of action, not because Plaintiff wanted to sue Muscarello, but because Muscarello participated in a certain public hearing before the Zoning Board of Appeals, and in so doing, became a participant or a party of record, of that public hearing. Section 5/3-107 of the Administrative Review Act of Illinois (735 ILCS 5/3-107) requires that a party seeking administrative review must name all parties of record. Consequently, Plaintiff was required to name Muscarello as a defendant within in the civil action for Count II - Administrative Review, just as the other Parties of Record were named. Muscarello is not on title to the property in Ogle County, which is only in Plaintiff's name. Muscarello has a law license and realtors license in the State of Illinois and has maintained his citizenship, domicile and residence in the State of Illinois on purpose and by design due to his practice of law in Illinois. Muscarello is registered to vote and has a driver's

license in the State of Illinois. Muscarello was named in the Complaint for the sole purpose of satisfying the requirements of the Administrative Review Act, and not for any other purpose.

JURISDICTION AND VENUE

48. Plaintiff is a citizen of the State of Arizona. The Defendants are not citizens of the State of Arizona, but are citizens of different states.

49. The civil actions for (X) Trespass and (XI) Public Nuisance involve a sum in excess of $75,000.00, and involve issues of law and fact wholly between (i) citizens of different states, and (ii) citizens of a state in which citizens or subjects of a foreign state are additional parties. This court has jurisdiction of these actions by reason of 28 USC 1332(a)(1) and (3).

50. The civil actions for (I) Declaratory Judgment, (II) Administrative Review, (III) Writ of Certiorari, (IV) Takings under Sections 2 and 15 of Article I of the Constitution of the State of Illinois, (VII) Violation of Due Process under Section 2 of Article I of the Constitution of the State of Illinois, and (IX) Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois, and (XII) Injunctive Relief, are so related to the claims with diversity jurisdiction under 28 USC 1332 that they form part of the same case or controversy. This Court has jurisdiction of these actions by reason of 28 USC 1367.

51. As the actions to which these claims arise within the Northern District of Illinois, Western Division, venue is proper in this Court, pursuant to 28 USC 1391 (a) and (c).

NATURE OF ACTION

52. Reserved.

53. The actions set forth under the existing laws of the State of Illinois are (I) Declaratory Judgment, (II) Administrative Review, (III) Writ of Certiorari, (V) Takings under Sections 2 and 15 of Article I of the Constitution of the State of Illinois, (VII) Violation of Due Process under Section 2 of Article I of the Constitution of the State of Illinois, (IX) Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois, (X) Trespass, (XI) Public Nuisance, and (XII) Injunctive Relief.

FACTUAL BACKGROUND COMMON TO ALL COUNTS

54. Pursuant to the power delegated to the Ogle County Board of Commissioners by the Illinois Counties Code, specifically 55 ILCS 5/5-12009.5, the Ogle County Board of Commissioners may pass an ordinance for the classification of zoning special uses and may grant a special use after a public hearing conducted by the Zoning Board of Appeals as set forth under the terms of 55 ILCS 5/5-12009.5.

55. The Ogle County Board of Commissioners originally adopted a Amendatory Zoning Ordinance on March 9, 1965, and the Ogle County Board of Commissioners have since amended that Zoning Ordinance numerous times (the Amendatory Zoning Ordinance and amendments thereto are hereinafter "Zoning Ordinance"). A true and accurate copy of the Zoning Ordinance is attached hereto and incorporated herein as Exhibit G. Only Division 9 of the Zoning Ordinance, which includes the applicable

sections at issue in this matter have been included in order to reduce the paperwork filed herein.

56. On or about September 15, 2003, the Zoning Board of Appeals on its own initiative-considered a text amendment to the Zoning Ordinance which provided for the application for a special use permit for the building of Wind Energy Conservation Systems as described in said text amendment (hereinafter the "Windmill Text Amendment").

57. On or about October 9, 2003, the Zoning Board of Appeals published a public notice of the public hearing on the Windmill Text Amendment in the Rochelle News Leader in Rochelle, Illinois.

58. On or about November 4, 2003, the Zoning Board of Appeals conducted a public hearing on the Windmill Text Amendment.

59. On or about November 4, 2003, the Zoning Board of Appeals issued a document entitled Findings of Fact and Recommendation of Ogle County Zoning Board of Appeals on the Windmill Text Amendment. A true and accurate copy of the Findings of Fact and Recommendation of Ogle County Zoning Board of Appeals is attached hereto as Exhibit H.

60. On or about November 18, 2003, the Ogle County Board of Commissioners enacted the Windmill Text Amendment. A true and accurate copy of the Windmill Text Amendment is attached hereto and incorporated herein as Exhibit I.

61. The Findings of Fact for the Windmill Text Amendment was not in accordance with Division 9, Section 9.07(G) of the Zoning Ordinance as the Findings of Fact for the Windmill Text Amendment

did not contain:

A. Any findings of fact, evidence, or consideration that the proposed amendment will allow development that is compatible with existing uses and zoning of nearby property.

B. Any findings of fact, evidence, or consideration that the County of Ogle and other service providers will be able to provide adequate public facilities and services to the property (including, but not necessarily limited to, schools, police and fire protection, roads and highways, water supply and sewage disposal), while maintaining adequate public facilities and levels of service to existing development.

C. Any findings of fact, evidence, or consideration that the proposed amendment will not result in significant adverse impacts on other property in the vicinity of the subject site or on the environment, including air, noise, stormwater management, wildlife and natural resources.

D. Any findings of fact, evidence, or consideration that the subject property is suitable for the proposed zoning classification.

E. Any findings of fact, evidence, or consideration that the proposed zoning classification is consistent with the trend of development, if any, in the general area of the subject property including changes, if any, which have taken place since the day the property in question was placed in its present zoning classification.

F. Any findings of fact, evidence, or consideration that the proposed amendment is consistent with the public interest and not solely for the interest of the applicant, giving due consideration to the stated purpose and intent of the Amendatory Zoning Ordinance as set forth in Division 1 therein, the Land Evaluation and Site Assessment (LESA) findings (if applicable), and the recommendation(s) of the Ogle County Regional Planning Commission with respect to the Ogle County Amendatory Comprehensive Plan.

G. Any findings of fact, evidence, or consideration to the existing uses and zoning of nearby property.

H. Any findings of fact, evidence, or consideration to the extent to which property values are diminished by the particular zoning restrictions.

I. Any findings of fact, evidence, or consideration to the extent to which limitation or destruction of property values of plaintiff promotes the general health, safety and welfare.

J. Any findings of fact, evidence, or consideration to the relative gain to the public as compared to the hardship imposed upon plaintiff.

K. Any findings of fact, evidence, or consideration to the suitability of the particular property for the purpose of which it is now zoned.

L. Any findings of fact, evidence, or consideration to the length of time that the property has been vacant as zoned considered in the context of land development in the area in which the property is located.

M. Any findings of fact, evidence, or consideration to the care with which the community has undertaken to plan its land use development.

N. Any findings of fact, evidence, or consideration to the evidence or lack of evidence of community need for the use proposed by the property owner.

62. As a result of the Windmill Text Amendment, Division 5, Section 5.01(C) ["AG-1" Agricultural District Special Uses] of the Zoning Ordinance currently provides that a wind energy conversion system may be allowed by a special use permit. A wind energy conversion system is a windmill that converts the kinetic energy of the wind into electricity (hereinafter "Wind Energy Conversion System").

63. On or about September 16, 2005, Baileyville applied for a special use permit with Ogle County for the installation of Commercial Wind Energy Conversion Systems in Ogle County known as the Baileyville Wind Farm, including the construction of forty (40) Wind Energy Conversion Systems on approximately 5,296 acres of land, with each Wind Energy Conversion System being a Gamesa Model G87, 2 Megawatt turbine with a height of 395 feet to the tip of the blade and a rotor diameter of 285 feet

(hereinafter the "Application"). A true and accurate copy of the Application is attached hereto and incorporated herein as Exhibit J. Exhibits to the Application have not been included in order to reduce the amount of paperwork filed herein.

64. Division 9, Section 9.08(B) [Special Uses: Application for Special Use Permit] of the Zoning Ordinance requires that the application for special use permit be filed upon the form and be accompanied by such information as shall be required by the Zoning Board of Appeals.

65. The application and instructions for a special use permit as provided by the Zoning Board of Appeals, as attached hereto and incorporated herein as Exhibit K, provides that the applicant include, amongst other information, the following items:

A. The application must be signed by the owner of record of the property.

B. The application shall include the correct names, addresses and percentage interest of all stockholders or shareholders owning an interest in excess of twenty percent (20%) of all outstanding stock of such corporation.

C. The application shall include names and addresses of all true and actual owners of a business entity doing business under an assumed name.

D. The application must state that the present zoning is in error.

E. That changing conditions warrant re-zoning.

66. The Application was not in accordance with the instructions for the application pursuant to

Division 9, Section 9.08(B) because it:
A. Is signed only by Baileyville and not a single owner of record to any of the property subject to the special use permit.

B. Does not include the correct names, addresses and percentage interest of all stockholders or shareholders owning an interest in excess of twenty percent (20%) of all outstanding stock of such corporation.

C. Does not include names and addresses of all true and actual owners of a business entity doing business under an assumed name.

D. Does not state why the present zoning is in error.

E. Does not state the changing conditions which warrant re-zoning.

67. On or about October 10, 2005, the Zoning Board of Appeals caused the Ogle County Life Newspaper in Oregon, Illinois to publish a Notice of Hearing for the Application (hereinafter the "Published Notice"). A true and accurate copy of the Published Notice is attached hereto and incorporated herein as Exhibit L.
68. The Published Notice published was not in accordance with the requirements of 55 ILCS 5/5-12009.5 for the following reasons:
A. Pursuant to subsection (b)(i) of 55 ILCS 5/5-12009.5 the Public Notice did not contain the

legal description of the property, the street address of the property, or any reference to any well-known landmark, highway road, thoroughfare or intersection.

B. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose that Baileyville was acting as agent for the applicable land holders who own the property for which the Special Use Permit was being requested.

C. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose Navitas as agent for Baileyville, where Navitas did in fact present itself as agent for Baileyville in the Public Hearing.

D. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, Navitas the Public Notice failed to disclose Navitas as agent for the applicable land holders who own the property for which the Special Use Permit was being requested, where Navitas did in fact present itself as an agent for the applicable land holders in the Public Hearing.

E. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all officers of Baileyville.

F. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all directors of

Baileyville.

G. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all shareholders owning in excess of twenty percent (20%) of the outstanding shares of Baileyville wherein Baileyville is a wholly owned subsidiary of Navitas, Navitas is a seventy-seven percent (77%) owned subsidiary of Gamesa.

H. Pursuant to subsection (b)(v) of 55 ILCS 5/5-12009.5 the Public Notice failed to specify any partners, a joint venture, syndicate or association including the names and addresses of the partners.

I. Pursuant to subsection (b)(vi) of 55 ILCS 5/5-12009.5 the Public Notice failed to specify the proposed special use.

69. Upon information and belief, the Zoning Board of Appeals caused to send out a notice to all owners of any land adjacent to or immediately across the street, alley, or public right-of-way from the property proposed as a special use related to the Public Hearing on the Application (the "Owners Notice"). A true and accurate copy of the Owners Notice is attached hereto and incorporated herein as Exhibit M.

70. The Owners Notice was not in accordance with the requirements of 55 ILCS 5/5-12009.5 for the following reasons:

A. Pursuant to subsection (b)(i) of 55 ILCS

5/5-12009.5 the Public Notice did not contain the legal description of the property, the street address of the property, or any reference to any well-known landmark, highway road, thoroughfare or intersection.

B. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose that Baileyville was acting as agent for the applicable land holders who own the property for which the Special Use Permit was being requested.

C. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose Navitas as agent for Baileyville, where Navitas did in fact present itself as agent for Baileyville in the Public Hearing.

D. Pursuant to subsection (b)(ii) of 55 ILCS 5/5-12009.5, the Public Notice failed to disclose Navitas as agent for the applicable land holders who own the property for which the Special Use Permit was being requested.

E. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all officers of Baileyville.

F. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all directors of Baileyville.

G. Pursuant to subsection (b)(iii) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the correct names and addresses of all shareholders owning in excess of twenty percent (20%) of the outstanding shares of Baileyville wherein Baileyville is a wholly owned subsidiary of Navitas, Navitas is a seventy-seven percent (77%) owned subsidiary of Gamesa, and Gamesa is a wholly owned subsidiary of Gamesa Spain.

H. Pursuant to subsection (b)(v) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify any partners, a joint venture, syndicate or association including the names and addresses of the partners.

I. Pursuant to subsection (b)(vi) of 55 ILCS 5/5-12009.5, the Public Notice failed to specify the proposed special use.

71. On or about November 7, 2005 through December 13, 2005, the Zoning Board of Appeals conducted a public hearing on the Application (hereinafter "Public Hearing").

72. At the Public Hearing, Navitas acted as agent for Baileyville.

73. During the Public Hearing on the Application, Plaintiff, as well as other constituents made several motions with regard to the Application, which the Zoning Board of Appeals either denied or refused to rule upon, as follows:

A. The Zoning Board of Appeals denied a written motion to continue the Public Hearing, requested because the Application contained over 900 pages, and the public had not been given a witness list or necessary documents in order to prepare for the Public Hearing.

B. The Zoning Board of Appeals refused and failed to rule upon a written motion and to dismiss the Application as defective because it was not signed by the owners of land subject to the proposed Special Use Permit.

C. The Zoning Board of Appeals refused and failed to rule upon an oral motion for failure to provide due process, as the public did not receive exhibits to be introduced into evidence, nor a list of witnesses and experts, nor given the subject matter of said witnesses and experts testimony prior thereto, thereby prohibiting the public from meaningfully preparing for cross-examination of Baileyville's witnesses and experts.

D. The Zoning Board of Appeals refused and failed to rule upon an oral motion to dismiss based upon the allegation that the Ogle County Board of Commissioners did not property authorize the Windmill Text Amendment where it did not follow the procedure set forth in the Zoning Ordinance in passing the Windmill Text Amendment.

E. The Zoning Board of Appeals refused and failed to rule upon an oral motion to dismiss the Application because the conditions proposed in the Zoning Board of Appeals staff report related to the property value guarantee, fire protection plan, and traffic control pattern were not available at the time of the Public Hearing.

F. The Zoning Board of Appeals refused and failed to rule upon a written Motion to Dismiss the Application because the Application was incomplete at the time the Public Hearing began.

74. During the Public Hearing on the Application, the Zoning Board of Appeals failed and refused to provide Plaintiff and other constituents with:
A. An Agenda.
B. A list of witnesses to be presented by Baileyville.
C. A list of expert witnesses, and a synopsis of their expertise and opinions.
D. Copies of exhibits to be introduced by Baileyville at the Public Hearing.
E. Copies of the Amendments to the Zoning Board of Appeals staff report prior to said report being entered into evidence.

F. A copy of the proposed Home Sellers Property Value Protection Plan.

75. Further, during the Public Hearing on the Application, the Zoning Board of Appeals refused a request by approximately ten (10) members of the general public to enter written comments prior to the close of the Public Hearing.
76. During the Public Hearing on the Application, the Zoning Board of Appeals:

A. Allowed Baileyville to enter evidence from a different governmental proceeding in a different state, namely before the Public Service Commission of Wisconsin, and the Plaintiff or other members of the public were not afforded their right to cross-examine said evidence.

B. Allowed Baileyville to enter evidence for various environmental studies, but as none of the authors of said studies were present, Plaintiff and other members of the public were not afforded their right to cross-examine said environmental studies.

77. The Zoning Board of Appeals denied due process to Plaintiff and other constituents at the Public Hearing on the Application for the aforementioned reasons.

78. At the Public Hearings, Baileyville failed to enter any evidence to support the Application and otherwise satisfy the standards as set forth in Division 9, Section 9.08(C) of the Zoning Ordinance for the following:

A. Pursuant to subsection (c)(1) of Division 9, Section 9.08 of the Zoning Ordinance related to public health, safety, comfort, and general welfare at large, Baileyville did not present any:

(i) medical experts, medical testimony, or medical evidence to support its claim that the special use would not be detrimental to the public health, safety, comfort and general welfare.

(ii) safety experts, safety testimony, or safety evidence to support its claim that the special use would not be detrimental to the public health, safety, comfort and general welfare, except for several bullet points cited in the Baileyville Exhibit 1 presented in the Public Hearing.

B. Pursuant to subsection (c)(2) of Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence related to the location or size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

C. Pursuant to subsection (c)(3) of Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence that the off-street parking and loading areas will be provided in accordance with the standards set forth in the Zoning Ordinance.

D. Pursuant to subsection (c)(4) of Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence as to the drainage issues, particularly in relation to the Plaintiff's property.

E. Pursuant to subsection (c)(5), Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence that the Application was deemed essential or desirable to preserve and promote the public health, safety and general welfare of Ogle County.

F. Pursuant to subsection (c)(6), Division 9, Section 9.08 of the Zoning Ordinance, Baileyville presented no experts, testimony, or evidence that the proposed Application complied with all other provisions of the applicable district regulations.

79. At the Public Hearings, Baileyville entered flawed, incomplete, misleading, and contradictory evidence that does not support the fact that Baileyville has clearly established that the Application has met the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance for the following:

A. Pursuant to subsection (c)(1) of Division 9, Section 9.08 of the Zoning Ordinance related to unreasonable detriment value of the property in the neighborhood, Baileyville presented a critically flawed, inaccurate and misleading real estate expert who:

(i) was not a licensed appraiser under the Illinois Real Estate Appraisal License Act (225 ILCS 458/1-1, et seq);

(ii) was not trained in appropriate appraisal methodology and practices;

(iii) was not familiar with the Uniform Standards of Professional Appraisal Practices;

(iv) did not adhere to the Uniform Standards of Professional Appraisal Practices as required by Section 10-5 of the Illinois Real Estate Appraisal Licensing Act (225 ILCS 458/10-5);

(v) did not use the paired sales analysis methodology as prescribed by the Uniform Standards of Professional Appraisal Practices;

(vi) did not understand or had never used the paired sales analysis as prescribed in the Uniform Standards of Professional Appraisal Practices;

(vii) used a linear reduction methodology which is not an acceptable practice under the Uniform Standards of Professional Appraisal Practices;

(viii) skewed the results of his report by comparing property values in Ogle County with those in Palm Springs California which are exceedingly divergent comparisons;

(ix) failed to include parameters normally incorporated such as average days on the market, market inventory sold, and sales price as percentage of listing price;

(x) failed to do any analysis or comparison with land in Illinois or Ogle County;

(xi) is by trade an energy consultant and not a real estate appraiser expert; and

(xii) has never prepared a real estate property value analysis prior to this report.

B. The project manager for the Baileyville project testified that the average wake effect of a Wind Energy Conversion System as provided in Baileyville Exhibit 3 was 10 times the length of the rotor diameter. A true and accurate copy of the document labeled Baileyville Exhibit 3 is attached hereto and incorporated herein as Exhibit N.

C. A wind engineering specialist for Baileyville testified that:

(i) the average wake effect of a Wind Energy Conversion System is between 8 to 11 times the blade diameter and that the wind industry standard is 10 times the blade diameter.

(ii) that if two Wind Energy Conversion Systems were placed 880 feet apart (twice the setback as required by the Special Use Permit) the energy loss as a result of the wake effect would be approximately five percent (5%).

(iii) that a five percent (5%) loss of efficiency in a Wind Energy Conversion System is a significant loss and over time would be a substantial loss of revenue from said Wind Energy Conversion System.

D. An engineer for Navitas and Gamesa stated that the Gamesa Model G87, 2 megawatt Wind Energy Conversion System is noticeably louder then the G80, 900 kilowatt Wind Energy Conversion System.

E. Presented a noise study related to the Gamesa Model G87 that the setback of 440 feet was in compliance with the Illinois Pollution Control Board regulations was misleading for the following reasons:

(i) a study was performed on a Gamesa Model G80, 900 kilowatt turbine which determined setback to a residence should be 705 feet.

(ii) the Gamesa Model G80 study was in error where it showed setback to residences where the setback should have been to property lines.

(iii) the setback for the smaller and quieter Gamesa Model G80 was 705 feet, when the setback for the larger and louder Gamesa Model G87 was allegedly in compliance at only 439 feet.

(iv) the study on the Gamesa Model G87 for Baileyville was not in accordance with the Illinois Pollution Control Board regulations as it contained violations of the setback for twenty-seven (27) residential dwellings.

F. Pursuant to subsection (c)(5) of Division 9, Section 9.08 of the Zoning Ordinance related to proposed uses that are not detrimental to the permitted developments and uses in the zoning district, Baileyville presented the critically flawed, inaccurate, and misleading real estate expert as provided in sub-paragraph A above.

G. Pursuant to subsection (c)(5) of Division 9, Section 9.08 of the Zoning Ordinance related to proposed uses that can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area, Baileyville presented critically flawed, inaccurate, and misleading real estate expert as provided in sub-paragraph A above.

H. Pursuant to subsection (c)(5) of Division 9, Section 9.08 of the Zoning Ordinance related to a proposed use that is deemed essential or desirable to preserve and promote the public health, safety, and general welfare of Ogle County, Baileyville presented critically flawed, inaccurate, and misleading real estate expert as provided in sub-paragraph A above.

80. During the Public Hearings, Plaintiff, as well as other opponents of the Project, entered evidence into the record that demonstrated that Baileyville could not meet the standards set forth in 55 ILCS 5/5-12009.5(c) and Division 9, Section 9.08(C) of the Zoning Ordinance for the following reasons:

A. A licensed real estate appraiser under 225 ILCS 458/1-1 et seq. who testified to the following:

(i) that he was familiar with the methodologies and practices of the Uniform Standards of Professional Appraisal Practices.

(ii) presented sales data comparison between Lee County (with a Wind Energy Conversion System) and Ogle County (does not yet have a Wind Energy Conversion System), which provides that:

a. average listing prices in Lee County are lower than Ogle County.

b. average market time in Lee County is longer than Ogle County.

c. average sales prices in Lee County are lower than Ogle County.

d. property values in Lee County were negatively impacted by the Wind Energy Conversion System, particularly those closer to where the Wind Energy Conversion Systems were constructed.

e. that the average market time for the property in the area of the Wind Energy Conversion System in Lee County is three (3) times the average of Lee County as a whole.

(iii) the impact is not exclusive to residential property, but also effects agricultural properties.

(iv) the Special Use Permit would prohibit future adoptive and permitted uses of neighboring properties within two (2) miles.

(v) that the Application does not meet the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance.

B. Presented a wind energy expert who testified to the following:

(i) that the United States Land Atlas cites Ogle County as a Class 2 wind, when a Class 4 wind is the minimal wind necessary for a viable economic return on a Wind Energy Conversion System.

(ii) that Baileyville's noise study was not in compliance with the Illinois Pollution Control Board regulations.

(iii) that the noise profile of a 1.5 megawatt Nicon 82 Wind Energy Conversion System required a setback of 1200 feet, therefore Ogle County's setback of 440 on a larger and louder Wind Energy Conversion System is in error.

(iv) that the Ogle County setback of 440 is not in compliance with the Illinois Pollution Control Board.

(v) that a setback of 2500 feet (or approximately 10 times the rotor blade diameter) would be appropriate.

(vi) that there are health, safety, and environmental concerns with the Wind Energy

Conversion System, including:

- a. shadow flicker.
- b. wildlife disruption.
- c. electromagnetic radiation.
- d. radar interference.
- e. crop dusting safety issues.
- f. ice and blade throw issues.

C. Placed into evidence Paired Sales Analysis report conducted by a MAI appraiser that demonstrated empirical evidence that the placement of a Wind Energy Conversion System near a property results in a significant decline of seventeen to twenty percent (17-20%) in property value. This study was done in Dodge County, Wisconsin.

D. Placed into evidence a University of Wisconsin survey conducted in Kawanee County where a Wind Energy Conversion System had been installed, that seventy-nine percent (79%) of residents would not buy or build a house within one (1) mile of the Wind Energy Conversion System and fifty-nine percent (59%) of residents would not buy or build a house within two (2) miles of a Wind Energy Conversion System.

E. Placed into evidence a Kawanee County

Township Assessor study which demonstrated that sales prices declined twenty-six percent (26%) within one (1) mile of the Wind Energy Conversion System and eighteen percent (18%) between one (1) mile and two (2) miles of a Wind Energy Conversion System.

F. Placed into evidence a publication conducted in England which concluded that properties were devalued by as much as thirty percent (30%) when a Wind Energy Conversion System was placed nearby.

G. Placed into evidence articles by medical doctors identifying the health damages of a Wind Energy Conversion System.

H. Placed into evidence published studies by University Hospitals identifying the health damages of Wind Energy Conversion Systems.

I. Placed into evidence a study by National Laboratories citing the health dangers of Wind Energy Conversion Systems.

J. Placed into evidence the Lincoln Township Government letter identifying the heath dangers of Wind Energy Conversion Systems.

K. Placed into evidence the National Safety Council publication citing health dangers of Wind Energy Conversion Systems.

L. Placed into evidence the National Wind Coordinating Committee published a handbook citing the health dangers of Wind Energy Conversion Systems and recommending much greater setbacks for Wind Energy Conversion Systems.

M. Placed into evidence the National Lightning Safety Council publication on safety concerns with Wind Energy Conversion Systems.

N. Placed into evidence the numerous articles on the electromagnetic dangers of Wind Energy Conversion Systems.

O. Placed into evidence the Boone County, Illinois Commissioners statement that setbacks less than 2,000 feet are unsafe.

81. On or about December 13, 2005, the Zoning Board of Appeals issued Findings of Fact in favor of granting the Application. A true and accurate copy of the Findings of Fact are attached hereto and incorporated herein as Exhibit O.

82. The Findings of Fact on the Application as issued by the Zoning Board of Appeals did not contain sufficient findings of facts, evidence, or consideration to clearly establish:

A. That the proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or the public health, safety, morals, comfort, or general welfare at large.

B. That the location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to:

(i) The location, nature and height of building, structures, walls and fences on the site; and

(ii) The nature and extent of proposed landscaping and screening on the proposed site.

C. That off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations.

D. That adequate utilities, ingress/egress to the site, access roads, drainage, and other such necessary facilities have been or will be provided.

E. That the proposed use can be operated in a manner that is not detrimental to the permitted developments and uses in the zoning district; can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; and is deemed essential or desirable to preserve and promote the public health, safety and general welfare of Ogle County.

F. That the proposed special use complies with all provisions of the applicable district regulations.

83. Baileyville entered as evidence at the Public Hearing a document labeled as Exhibit 3 which provides the general standard in the wind energy industry for the minimum distance between Wind Energy Conversion Systems or adjoining non-participating landowners is ten (10) times the rotor blade diameter.

84. The minimum set back to another Wind Energy Conversion Systems or adjoining non-participating property for the Gamesa model G87 under the general standard in the wind energy industry, as presented by Baileyville, would be 2,850 feet (285 foot rotor diameter x 10 times rotor blade diameter).

85. The minimum standard set back to another Wind Energy Conversion System or adjoining non-participating property under the Special Use Permit is 1.1 times the height of the Wind Energy Conversion System, in the case of the Gamesa model G87, or approximately 435 feet (395 height to tip of rotor blade x 1.1 times).

86. The proposed Wind Energy Conversion System on the Application would violate the set back standards as prescribed by the wind energy industry and Baileyville's own exhibits and evidence such that the Wind Energy Conversion Systems are placed approximately the following distances from the Plaintiff's property:

A. The Wind Energy Conversion System on the Miller property would be approximately 1030 feet, thereby encroaching and trespassing upon 1820 feet of the Plaintiff's property.

B. The Wind Energy Conversion System on the Coffman property would be approximately 725 feet, thereby encroaching and trespassing upon 2125 feet of the Plaintiff's property.

C. The Wind Energy Conversion System on the Coffman property would be approximately 590 feet, thereby encroaching and trespassing upon 2260 feet of the Plaintiff's property.

D. The Wind Energy Conversion System on the Hundermark property would be approximately 885 feet, thereby encroaching and trespassing upon 1965 feet of the Plaintiff's property.

E. The Wind Energy Conversion System on the Hollewell property would be approximately 1180 feet, thereby encroaching and trespassing upon 1670 feet of the Plaintiff's property.

F. The Wind Energy Conversion System on the Borneman property would be approximately 885 feet, thereby encroaching and trespassing upon 1965 feet of the Plaintiff's property.

87. On or about December 20, 2005, the Ogle County Board of Commissioners authorized and issued a Special Use Permit to Baileyville as Ordinance Number 07-05 SU (hereinafter "Special Use Permit"). A true and accurate copy of the

Special Use Permit is attached hereto and incorporated herein as Exhibit P.

88. The Special Use Permit as enacted by the Ogle County Board of Commissioners is not in accordance with 55 ILCS 5/5-12009.5(c) as the Special Use Permit contains a condition for Payment in Lieu of Taxes, and said condition is not reasonable and necessary to meet the standards of Division 9, Section 9.08 of the Zoning Ordinance.

89. The Special Use Permit as enacted by the Ogle County Board of Commissioners is not in accordance with Division 9, Section 9.08(D) as the Special Use Permit contains a condition for Payment in Lieu of Taxes, and said condition is not a condition or restriction deemed necessary to secure the general objectives or to reduce injury to value of the property in the neighborhood.

90. Baileyville, Navitas, and Gamesa failed to clearly establish that the Application met the standards as established by Division 9, Section 9.08(C), subsections 1 through 6.

91. As a result of (i) Baileyville's failure to enter evidence supporting its Application, (ii) Baileyville's entry of flawed, incomplete, and misleading evidence, and (iii) the Plaintiff and other constituents entering evidence demonstrating the Application did not meet standards set forth in Division 9, Section 9.08(c) of the Zoning Ordinance, and (iv) the Zoning Board of Appeals having failed to make sufficient findings of fact to establish the standards and elements of Division 9, Section 9.08(c) of the Zoning Ordinance, the Zoning Board of Appeals and Ogle County Board of Commissioners did not have sufficient evidence to

clearly establish that the Special Use Permit meets the above-mentioned standards.

92. On or about December 20, 2005, the Ogle County Board of Commissioners passed and authorized the Home Sellers Property Value Protection Plan in conjunction with and as part of the Special Use Permit even though said Home Sellers Property Value Protection Plan was never provided to the public during the Public Hearing. Further the Zoning Board of Appeals was making legislative decisions regarding the Home Sellers Property Value Protection Plan during the finding of fact. A true and accurate copy of the Home Sellers Property Value Protection Plan is attached hereto as Exhibit Q.

COUNT I

DECLARATORY JUDGMENT AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS, BAILEYVILLE, NAVITAS, AND GAMESA

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count I for Declaratory Judgment.

93. Section 5/2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701) provides for the entry of a declaratory judgment where a real and substantial controversy exists between parties, including determinations of the construction of governmental regulations ordinances, and statutes.

94. A real and substantial controversy exists in regards to whether action taken by the Zoning Board of Appeals and the Ogle County Board of Commissioners ware appropriate and legal with regard to the following:

A. Whether findings of fact on the Windmill Text Amendment were clearly established as required by Division 9, Section 9.07 of the Zoning Ordinance and whether the Windmill Text Amendment is therefore invalid, illegal, and void.

B. Whether the Application was in compliance with Division 9, Section 9.08(B) of the Zoning Ordinance, and whether the Application is therefore invalid, illegal, and void.

C. Whether the Published Notice for the Public Hearing was in compliance with 55 ILCS 5/5-12009.5, and whether the Published Notice is therefore invalid, illegal, and void.

D. Whether the Owners Notice for the Public Hearing was in compliance with 55 ILCS 5/5-12009.5, and whether the Owners Notice is therefore invalid, illegal, and void.

E. Whether the public was afforded their due process rights at the Public Hearing, and whether the Public Hearing was therefore invalid, illegal, and void.

F. Whether the Findings of Fact clearly established that the Application met the standards set forth in Division 9, Section 9.08 of the Zoning Ordinance, and whether the findings of fact are therefore invalid, illegal, and void.

G. Whether the necessary standards of Division 9, Section 9.08 of the Zoning Ordinance were considered, and whether the Special Use Permit is therefore invalid, illegal, and void.

H. Whether Baileyville clearly established the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance, and whether the Special Use Permit is therefore invalid, illegal, and void.

I. Whether the Special Use Permit contains a condition for Payment in Lieu of Taxes which is not reasonably necessary to meet the standards as set forth in Division 9, Section 9.08(C) of the Zoning Ordinance and is therefore invalid, illegal, and void.

J. Whether the Special Use Permit contains a condition for Payment in Lieu of Taxes that is not deemed necessary to secure the general objectives or reduce injury to the value of property in the neighborhood, and is therefore invalid, illegal, and void.

K. Whether the Special Use Permit is in fact invalid, illegal, or void because the Windmill Text Amendment, Application, Published Notice, Owners Notice, or Findings of Fact are invalid, illegal, and void.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter an Order finding the following:

A. That the necessary Findings of Fact were not clearly established with regard to the Windmill Text Amendment, that the Windmill Text Amendment is therefore invalid, illegal, and void; and that the Special Use Permit based upon the Windmill Text Amendment is also therefore invalid, illegal, and void.

B. That the Application was not in compliance with Division 9, Sections 9.08(B) and 9.08(C)(6) of the Zoning Ordinance, that said Application was therefore invalid, illegal, and void, and that the Special Use Permit based upon the Application is therefore invalid, illegal, and void.

C. That the Published Notice for the Public Hearing was not in compliance with 55 ILCS 5/5-12009.5, that said Published Notice was therefore invalid, illegal, and void; and that the Special Use Permit based upon the Published Notice is also therefore invalid, illegal, and void.

D. That the Owners Notice for the Public Hearing was not in compliance with 55 ILCS 5/5-12009.5, that said Owners Notice was therefore invalid, illegal, and void; and that the Special Use Permit based upon the Owners Notice is also therefore invalid, illegal, and void.

E. That the Zoning Board of Appeals failed to rule upon the motions by Plaintiff and other constituents at the Public Hearing, that the failure to rule was in violation of the Plaintiff's and other constituents due process rights; and that the Special Use Permit based upon the Public Hearing is also therefore invalid, illegal, and void.

F. That the Zoning Board of Appeals failed to make sufficient findings of fact that clearly establish that the Application met the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance; and that the Special Use Permit based upon those findings of fact were also therefore invalid, illegal and void.

G. That the Zoning Board of Appeals and the Ogle County Board of Commissioners failed to consider the necessary standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance; and that the Special Use Permit based upon those considerations is also therefore invalid, illegal, and void.

H. That Baileyville failed to clearly establish and prove that it met the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance; and that the Special Use Permit based upon that failure is also therefore invalid, illegal, and void.

I. That the Special Use Permit contains a condition which is not reasonably necessary under 55 ILCS 5/5-12009.5 to meet the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance;

and that the Special Use Permit is therefore invalid, illegal, and void.

J. That the Special Use Permit contains a condition that is not deemed necessary to secure the general obligations or reduce injury to the value of property in the neighborhood and is therefore invalid, illegal, and void.

K. For such other relief this court deems just and equitable.

COUNT II
ADMINISTRATIVE REVIEW PURSUANT TO 735 ILCS 5/101 et. seq. AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS AND PARTIES OF RECORD

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count II for Administrative Review Pursuant to 735 ILCS 5/101 et. seq..

93-94. Reserved.

95. Section 5/5-12012 of the Illinois Counties Code (735 ILCS 5/5-12012) provides all final administrative decisions (as defined in Section 3-101 of the Code of Civil Procedure, 735 ILCS 5/3-101) of the board of appeals hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Laws.

96. The Zoning Board of Appeals and Ogle County Board of Commissioners are administrative agencies under the existing laws of the State of Illinois

pursuant to 735 LCS 5/3-101.

97. The Public Hearing on the Application and resulting Findings of Fact are an administrative decision under the existing laws of the State of Illinois pursuant to 735 ILCS 5/3-101.

98. Plaintiff herein seeks an administrative review of the Zoning Board of Appeals and Ogle County Board of Commissioners for the Windmill Text Amendment, Public Hearing, Findings of Fact, Special Use and Home Seller Property Value Protection Plan as a result of the following administrative defects:

A. With regard to the Windmill Text Amendment, the Zoning Board of Appeals and the Ogle County Board of Commissioners failed to issue findings of fact clearly establishing compliance with all the standards as set forth in Division 9, Section 9.07 of the Zoning Ordinance.

B. With regard to the Public Hearing, the Zoning Board of Appeals and Ogle County Board of Commissioners:

(i) refused and failed to comply with all the requirements set forth in Division 9, Section 9.08 of the Zoning Ordinance with regard to the Application.

(ii) refused and failed to comply with all the requirements set forth in 55 ILCS 5/5-12009.5 when issuing the Published Notice.

(iii) refused and failed to comply with all the requirements set forth in 55 ILCS 5/5-12009.5 when issuing the Owners Notice.

(iv) refused and failed to rule and act upon the Plaintiff and other constituents motions.

(v) refused and failed to provide Plaintiff and other constituents with Baileyville's exhibits to the Application.

(vi) refused and failed to provide Plaintiff and other constituents with the names of Baileyville's witnesses and a synopsis of what the Baileyville witnesses would be testifying on.

(vii) refused and failed to provide Plaintiff and other constituents with the names of expert witnesses and a synopsis of what the expert witnesses would be testifying on.

(viii) refused and failed to afford Plaintiff and other constituents due process of law under Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(ix) refused and failed to afford Plaintiff and other constituents due process of law under Section 2 of Article I of the Constitution of the State of Illinois.

(x) refused and failed to give consideration to all the evidence entered by Plaintiff and other constituents which proved that Baileyville could clearly not establish that the Application met all of the standards of Division 9, Section 9.08 of the

Zoning Ordinance.

C. With regard to the Findings of Fact, the Zoning Board of Appeals and Ogle County Board of Commissioners refused and failed to clearly establish that the application met all the standards of Division 9, Section 9.08 of the Zoning Ordinance.

D. With regard to the Special Use Permit, the Zoning Board of Appeals and Ogle County Board of Commissioners:

(i) refused and failed to clearly establish that the Application met all of the standards of Division 9, Section 9.08 of the Zoning Ordinance.

(ii) refused and failed to deny the Special Use Permit when Baileyville failed to clearly establish that it had met all of the elements and requirements of Division 9, Section 9.08 of the Zoning Ordinance.

(iii) refused and failed to give consideration to the evidence entered by Plaintiff and other constituents that proved Baileyville could not clearly establish that the Application met all the standards and requirements of Division 9, Section 9.08 of the Zoning Ordinance.

(iv) granted a regulatory private inverse taking of Plaintiff's property under Article 1 of the Fourteenth Amendment to the Constitution of the United States.

(vi) granted a regulatory private inverse taking of

Plaintiff's property under Sections 2 and 15 of the Constitution of the State of Illinois.

(vii) included a condition that is not reasonably necessary under 55 ILCS 5/5-12009.5(c) to meet the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance.

(viii) included a condition that is not deemed necessary to secure the general obligations to reduce injury to the value of property in the neighborhood under Division 9, Section 9.08 of the Zoning Ordinance.

E. With regard to the Home Sellers Property Value Protection Plan, the Zoning Board of Appeals and the Ogle County Board of Commissioners:

(i) refused and failed to include the Home Sellers Property Value Protection Plan or any documents related thereto in the Staff Report as prepared by the Zoning Board of Appeals.

(ii) refused and failed to present any evidence of the Home Sellers Property Value Protection Plan at the Public Hearing.

(iii) refused and failed to disclose to the Plaintiff or other constituents any details concerning the Home Sellers Property Value Protection Plan.

(iv) refused and failed to allow the Plaintiff or other constituents to cross-examine any evidence related to the Home Sellers Property Value Protection Plan.

(v) refused and failed to afford Plaintiff and other constituents due process of the law under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(vi) refused and failed to afford Plaintiff and other constituents due process of the law under Section 2 of Article I of the Constitution of the State of Illinois.

(vii) refused and failed to afford Plaintiff and other constituents equal protection under the law under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(viii) refused and failed to afford Plaintiff and other constituents equal protection under the law under Section 2 of Article I of the Constitution of the State of Illinois.

99. The defects and errors as provided herein have materially affected the property rights of the Plaintiff, including a diminution of value of her property and a denial of her right to the highest and best use thereof and have resulted in a substantial injustice to Plaintiff.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter an Order as follows:

A. Reversing the decision of the Zoning Board of

Appeals or in the alternative to reverse and remand the decision to (i) take into account the evidence presented by Plaintiff and other constituents to the Special Use Permit, (ii) permit Plaintiff and other constituents due process under the law, and (iii) permit Plaintiff and other constituents equal protection under the law.

B. To reverse the decision of the Ogle County Board of Commissioners or in the alternative to reverse and remand the decision to (i) take into account the evidence presented by Plaintiff and other constituents and require the Ogle County Board of Commissioners to comply with Division 9, Section 9.08 of the Zoning Ordinance, (ii) permit Plaintiff and other constituents due process under the law, and (iii) permit Plaintiff and other constituents equal protection under the law.

C. That an injunction enter against the Zoning Board of Appeals and the Ogle County Board of Commissioners from administering, enforcing, adopting, or otherwise infringing upon the property rights of the Plaintiff or other constituents, and to preserve the status quo pending this Administrative Review.

D. For such other relief this court deems just and equitable.

COUNT III
WRIT OF CERTIORARI AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, AND ZONING

BOARD OF APPEALS IS PLEAD IN THE ALTERNATIVE OF COUNT I FOR DECLARATORY JUDGMENT AND COUNT II FOR ADMINISTRATIVE REVIEW

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count III for Writ of Certiorari.
93-99 Reserved.
100. Plaintiff herein seeks a determination that the Zoning Board of Appeals and Ogle County Board of Commissioners acted illegally with respect to the Public Hearing, Findings of Fact, Special Use and Home Seller Property Value Protection Plan in each of the following manners:
A. With regard to the Windmill Text Amendment, the Zoning Board of Appeals and the Ogle County Board of Commissioners failed to issue findings of fact clearly establishing compliance with all the standards as set forth in Division 9, Section 9.07 of the Zoning Ordinance.

B. With regard to the Public Hearing, the Zoning Board of Appeals and Ogle County Board of Commissioners:

(i) refused and failed to comply with all the requirements set forth in Division 9, Section 9.08 of the Zoning Ordinance with regard to the Application.

(ii) refused and failed to comply with all the requirements set forth in 55 ILCS 5/5-12009.5 when issuing the Published Notice.

(iii) refused and failed to comply with all the requirements set forth in 55 ILCS 5/5-12009.5 when issuing the Owners Notice.

(iv) refused and failed to rule and act upon the Plaintiff's and other constituents motions.

(v) refused and failed to provide Plaintiffs and other constituents with Baileyville's exhibits to the Application.

(vi) refused and failed to provide Plaintiffs and other constituents with the names of Baileyville's witnesses and a synopsis of what the Baileyville witnesses would be testifying on.

(vii) refused and failed to provide Plaintiffs and other constituents with the names of expert witnesses and a synopsis of what the expert witnesses would be testifying on.

(viii) refused and failed to afford Plaintiff and other constituents due process of law under Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(ix) refused and failed to afford Plaintiff and other constituents due process of law under Section 2 of Article I of the Constitution of the State of Illinois.

(x) refused and failed to give consideration to the evidence entered by Plaintiff and other constituents which proved that Baileyville could clearly not establish that the Application met all of the standards of Division 9, Section 9.08 of the Zoning Ordinance.

C. With regard to the Findings of Fact, the Zoning Board of Appeals and Ogle County Board of Commissioners refused and failed to clearly establish that the application met all the standards of Division 9, Section 9.08 of the Zoning Ordinance.

D. With regard to the Special Use Permit, the Zoning Board of Appeals and Ogle County Board of Commissioners:

(i) refused and failed to clearly establish that the Application met all of the standards of Division 9, Section 9.08 of the Zoning Ordinance.

(ii) refused and failed to deny the Special Use Permit when Baileyville failed to clearly establish that it had met all of the elements and requirements of Division 9, Section 9.08 of the Zoning Ordinance.

(iii) refused and failed to give consideration to the evidence entered by Plaintiff and other members of the public that proved Baileyville could not clearly establish that the Application met the elements and requirements of Division 9, Section 9.08 of the Zoning Ordinance.

(iv) granted a regulatory private inverse taking of Plaintiff's property under Article 1 of the Fourteenth Amendment to the Constitution of the United States.

(vi) granted a regulatory private inverse taking of Plaintiff's property under Sections 2 and 15 of the Constitution of the State of Illinois.

(vii) included a condition that is not reasonably necessary under 55 ILCS 5/5-12009.5(c) to meet all the standards as set forth in Division 9, Section 9.08 of the Zoning Ordinance.

(viii) included a condition that is not deemed necessary to secure the general obligations to reduce injury to the value of property in the neighborhood under Division 9, Section 9.08 of the Zoning Ordinance.

E. With regard to the Home Sellers Property Value Protection Plan, the Zoning Board of Appeals and the Ogle County Board of Commissioners:

(i) refused and failed to include the Home Sellers Property Value Protection Plan or any documents related thereto in the Staff Report as prepared by the Zoning Board of Appeals.

(ii) refused and failed to present any evidence of the Home Sellers Property Value Protection Plan at the Public Hearing.

(iii) refused and failed to disclose to the Plaintiff or other constituents any details concerning the Home Sellers Property Value Protection Plan.

(iv) refused and failed to allow the Plaintiff or other constituents to cross-examine any evidence related to the Home Sellers Property Value Protection Plan.

(v) refused and failed to afford Plaintiff and other constituents of the public due process of the law under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(vi) refused and failed to afford Plaintiff and other constituents due process of the law under Section 2 of Article I of the Constitution of the State of Illinois.

(vii) refused and failed to afford Plaintiff and other constituents equal protection under the law under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(viii) refused and failed to afford Plaintiff and other constituents equal protection under the law under Section 2 of Article I of the Constitution of the State of Illinois.

101. A Writ of Certiorari should issue and this honorable Court should review the final decision of the Zoning Board of Appeals and Ogle County Commissioners as those bodies acted illegally and Plaintiff has no direct appeal or other mode of direct review of the proceeding by the Zoning Board of Appeals or the Ogle County Board of Commissioners, nor is there any other adequate remedy of law available to Plaintiff.
WHEREFORE, Plaintiff, PATRICIA A.

MUSCARELLO, hereby requests this honorable Court to issue a Writ of Certiorari upon the Zoning Board of Appeals and the Ogle County Board of Commissioners to review the records to determine if the Zoning Board of Appeals and Ogle County Board of Commissioners acted illegally in the passage of the Windmill Text Amendment, conducting the Public Hearing, issuing the Findings of Fact, passage of the Special Use Permit, passage of the Home Sellers Property Value Protection Plan, and for such other relief this court deems just and equitable.

COUNT IV
RESERVED

COUNT V

TAKINGS UNDER SECTIONS 2 AND 15 OF ARTICLE I OF THE CONSTITUTION OF THE STATE OF ILLINOIS AGAINST OGLE COUNTY BOARD OF COMMISSIONERS AND ZONING BOARD OF APPEALS

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count V for Takings under Sections 2 and 15 of Article 1 of the Constitution of the State of Illinois.

93-101. Reserved.

102. By virtue of the issuance of the Special Use Permit, the Zoning Board of Appeals and Ogle County Board of Commissioners have enacted a

county governmental act that has unreasonable and illegally taken, injured and damaged the adjacent property owned by Plaintiff as the Special Use Permit fully encompasses and surrounds Plaintiff's property.

103. The taking, injury, and damage of Plaintiff's property by the Zoning Board of Appeals and the Ogle County Board of Commissioners was not for a public purpose, but rather for deriving private economic benefits for Baileyville, a private entity.

104. The taking, injury, and damage of Plaintiff's property will be severe and without just compensation to Plaintiff, in that Plaintiff now be:

(i) deprived of the full extent of the kinetic energy of the wind and air as it enters Plaintiff's property.

(ii) deprived of the full extent of the Accessory Use under Division 5, Section 5.01(N) of the Zoning Ordinance.

(iii) subject to the shadow flicker and reduction of light upon the property caused by the Wind Energy Conservation System.

(iv) subject to the severe noise caused by the Wind Energy Conservation System.

(v) subject to possible "ice throw" where ice will be physically thrown onto Plaintiff's property.

(v) subject to possible "blade throws" where a rotor blade is physically thrown onto Plaintiff's property.

(vi) subject to radar interference.

(vii) subject to cell phone interference.

(viii) subject to GPS interference.

(ix) subject to wireless communication interference.

(x) subject to television interference.

(xi) subject to higher chances of lightning damage.

(xii) subject to higher amounts of electromagnetic radiation.

(xiii) subject to damage by stray voltage; and

(ixx) prevented from crop dusting of the agricultural land.

105. The Special Use Permit is harsh, arbitrary, oppressive, prohibitory, and confiscatory upon Plaintiff's property.

106. The Special Use Permit constitutes a cloud on Plaintiff's title to said property.

107. The taking, injury, and damage to Plaintiff's property will unjustly, severely, materially, and substantially restrict, impair, limit, and deprive Plaintiff of many of the current uses of the property, as well as additional, new, future, higher, and better uses of Plaintiff's property.

108. The taking, injury, and damage to Plaintiff's

property by the Zoning Board of Appeals and the Ogle County Board of Commissioners do not serve a public purpose or contribute to improve the general health, safety, and well being of the public, but rather serves to derive purely economic and monetary benefits to a private company, namely Baileyville.

109. The taking, injury, damage and deprivation to Plaintiff's property substantially devalues and decreases the fair market value of the property, valued by measure of present, prospective, and available uses of the property.

110. The taking, injury, and damage deprives Plaintiff of the highest and best use of said property.

111. The taking, injury, and damage to Plaintiff's property by the regulatory inverse private taking by the Zoning Board of Appeals and Ogle County Board of Commissioners for the benefit of Baileyville is in violation of Section 2 and 15 of Article I of the Constitution of the State of Illinois.

112. The taking, injury, and damage to Plaintiff's property by the regulatory inverse private taking by the Zoning Board of Appeals and the Ogle County Board of Commissioners for the benefit of Baileyville is in violation of Section 2 of Article I of the Constitution of the State of Illinois, which provides that no person shall be deprived of life, liberty, or property without due process of law.

113. The taking, injury, and damage to Plaintiff's property by the regulatory inverse private taking by the Zoning Board of Appeals and the Ogle County Board of Commissioners for the benefit of Baileyville is in violation of Section 15 of Article I of the

Constitution of the State of Illinois, which prohibits the taking or damaging of private property without just compensation.

114. The taking, injury, and damage to Plaintiff's property by the regulatory inverse private taking by the Zoning Board of Appeals and the Ogle County Board of Commissioners constitutes a private taking of real property not for the benefit of the safety, health, and general welfare of the public in violation of Sections 2 and 15 of the Constitution of the State of Illinois.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter a judgment that declares the Special Use Permit approved by the Zoning Board of Appeals and Ogle County Board of Appeals as invalid, illegal, unconstitutional, and void.

COUNT VI
RESERVED

COUNT VII
VIOLATION OF DUE PROCESS UNDER SECTION 2 OF ARTICLE I OF THE CONSTITUTION OF THE STATE OF ILLINOIS AGAINST OGLE COUNTY BOARD OF COMMISSIONERS AND ZONING BOARD OF APPEALS

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count VII for Violation of Due Process under Section 2 of Article I of the Constitution of the State of Illinois.

93-114. Reserved.

115. In denying the Plaintiff and other members of the public their rights to due process during the Public Hearing and with the issuance of the Special Use Permit, the Zoning Board of Appeals and the Ogle County Board of Commissioners have violated Section 2 of Article I of the Constitution of the State of Illinois.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court enter a judgment that the conduct at the Public Hearing by the Zoning Board of Appeals and the issuance of the Special Use Permit approved by the Ogle County Board of Commissioners are in violation of Plaintiff's dues process and that the Public Hearing, and Special Use Permit are therefore invalid, illegal, unconstitutional and void.

COUNT VIII

RESERVED

COUNT IX

VIOLATION OF EQUAL PROTECTION UNDER SECTION 2 OF ARTICLE I OF THE CONSTITUTION OF THE STATE OF ILLINOIS AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS, BAILEYVILLE, NAVITAS, AND GAMESA, AND ADJACENT PROPERTIES

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs

1 through 92 of this Count IX for Violation of Equal Protection under Section 2 of Article I of the Constitution of the State of Illinois.

93-115. Reserved.

116. The Home Sellers Property Value Protection Plan applies strictly to property owners which maintain an existing dwelling on their property within one (1) mile of a Wind Energy Conversion System.

117. The Home Sellers Property Value Protection Plan does not apply to owners of land who have commercial, business, retail, or agricultural purposes.

118. The Home Sellers Property Value Protection Plan grants greater property rights of those owning a dwelling over those owning land for commercial, business, retail, or agricultural purposes.

119. In denying certain property rights of owners of commercial, business, retail or agricultural land, that are granted to owners of land with a dwelling thereon, the Zoning Board of Appeals and the Ogle County Board of Commissioners have violated Section 2 of Article I of the Constitution of the State of Illinois.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter a judgment that declares the Special Use Permit approved by the Zoning Board of Appeals and Ogle County Board of Appeals as invalid, illegal, unconstitutional, and void.

COUNT X

TRESPASS AGAINST OGLE COUNTY BOARD OF COMMISSIONS, ZONING BOARD OF APPEALS, ADJACENT PROPERTIES, BAILEVILLE, NAVITAS & GAMESA

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count X for Trespass.

93-119. Reserved.

120. That by reason of construction of the Wind Energy Conversion System as authorized by the Special Use Permit issued by the Ogle County Board of Commissioners, Baileyville, Navitas, and Gamesa will build Wind Energy Conversion Systems on the Adjacent Properties completely surrounding and encompassing Plaintiff's property.

121. The construction of the Wind Energy Conversion System, by Baileyville, Navitas, Gamesa, and Adjacent Properties, will knowingly and intentionally cause the following trespasses upon the Plaintiff's property:

(i) deprived of the full extent of the kinetic energy of the wind and air as it enters Plaintiff's property.

(ii) deprived of the full extent of the Accessory Use under Division 5, Section 5.01(N) of the Zoning Ordinance.

(iii) subject to severe noise in violation of the Illinois Pollution Control Board regulations.

(iv) subject to the shadow flicker and reduction of light upon the property caused by the Wind Energy Conservation System.

(v) subject to the severe noise caused by the Wind Energy Conservation System.

(vi) subject to possible "ice throw" where ice will be physically thrown onto Plaintiff's property.

(vii) subject to possible "blade throws" where a rotor blade is physically thrown onto Plaintiff's property.

(viii) subject to radar interference.

(ix) subject to cell phone interference.

(x) subject to GPS interference.

(xi) subject to wireless communication interference.

(xii) subject to television interference.

(xiii) subject to higher chances of lightning damage.

(ixx) subject to higher amounts of electromagnetic radiation.

(xx) subject to damage by stray voltage; and

(xxi) prevented from crop dusting of the agricultural land.

122. As a result of the Special Use Permit, the Ogle County Board of Commissioners and the Zoning Board of Appeals have knowingly and intentionally authorized by ordinance the trespass upon the Plaintiff's property as set forth above.

123. The intentional trespass by Baileyville, Navitas, Gamesa, and Adjacent Properties, upon the Plaintiff's property will unreasonably, and substantially restrict, impair, limit, and deprive Plaintiff of many of the current uses of the property, as well as additional, new, future, higher, and better uses of Plaintiff's property, and will unreasonably deny the Plaintiff the quiet enjoyment of the property.

124. The intentional trespass by Baileyville, Navitas, Gamesa, and Adjacent Properties, upon Plaintiff's property will cause an unreasonable diminution of value of the property, an unreasonable restriction in the use of the property, and will otherwise unreasonably deprive the Plaintiff of the highest and best use of said property.

125. By reason of the intentional trespass of Plaintiff's property by Baileyville, Navitas, Gamesa, and Adjacent Properties, Plaintiff will suffer damages in excess of $75,000.00, as a result of the depreciation of use and value of said property. The expert MAI real estate appraiser presented evidence at the Public Hearing that the placement of Wind Energy Conservation Systems near a property results in a decline of seventeen to twenty percent (17% to 20%) based on previous wind farm

developments. Further studies entered into evidence at the Public Hearing demonstrated declines in values up to thirty percent (30%). Plaintiff currently owns 240 acres near the Wind Energy Conservation System approved under the Special Use Permit. The value of property located in this area of Ogle County is approximately $6,000.00 per acre. Therefore the value of Plaintiff's property is approximately $1,440,000.00 (240 acres x $6,000.00 per acre). A seventeen to thirty percent (17% to 30%) reduction of the total value of Plaintiff's property would amount to a loss in value in excess $200,000.00 ($1,440,000.00 x .17% reduction in value = $244,800.00; $1,440,000.00 x .30% reduction in value = $432,000.00), which is more than the $75,000.00 requirement as set forth in 28 U.S.C. 1332. WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court enter a judgment against the Ogle County Board of Commissioners, Zoning Board of Appeals, Adjacent Properties, Baileville, Navitas, and Gamesa in an amount greater than $75,000.00 and for such other relief this court deems just and equitable.

COUNT XI

PUBLIC NUISANCE AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS, ADJACENT PROPERTIES, BAILEYVILLE, NAVITAS & GAMESA

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count XI for Public Nuisance.

93-125. Reserved.

126. That by reason of construction of the Wind Energy Conversion System as authorized by the Special Use Permit issued by the Ogle County Board of Commissioners, Baileyville, Navitas, and Gamesa will build Wind Energy Conversion Systems on the Adjacent Properties completely surrounding and encompassing Plaintiff's property.

127. The construction of the Wind Energy Conversion System, by Baileyville, Navitas, Gamesa, and Adjacent Properties, will knowingly and intentionally cause the following substantial invasion, interference, annoyance, and nuisance upon Plaintiff's property:

(i) deprived of the full extent of the kinetic energy of the wind and air as it enters Plaintiff's property.

(ii) deprived of the full extent of the Accessory Use under Division 5, Section 5.01(N) of the Zoning Ordinance.

(iii) subject to severe noise in violation of the Illinois Pollution Control Board regulations.

(iv) subject to the shadow flicker and reduction of light upon the property caused by the Wind Energy Conservation System.

(v) subject to the severe noise caused by the Wind Energy Conservation System.

(vi) subject to possible "ice throw" where ice will be physically thrown onto Plaintiff's property.

(vii) subject to possible "blade throws" where a rotor blade is physically thrown onto Plaintiff's property.

(viii) subject to radar interference.

(ix) subject to cell phone interference.

(x) subject to GPS interference.

(xi) subject to wireless communication interference.

(xii) subject to television interference.

(xiii) subject to higher chances of lightning damage.

(ixx) subject to higher amounts of electromagnetic radiation.

(xx) subject to damage by stray voltage; and

(xxi) prevented from crop dusting of the agricultural land.

128. As a result of the Special Use Permit, the Ogle County Board of Commissioners and the Zoning Board of Appeals have knowingly and intentionally authorized by ordinance the substantial invasion, interference, annoyance and nuisance upon the Plaintiff's property as set forth above.

129. The intentional and substantial invasion, interference, annoyance, and nuisance by Baileyville,

Navitas, Gamesa, and Adjacent Properties, upon the Plaintiff's property will unreasonably deny substantially restrict, impair, limit, and deprive Plaintiff of many of the current uses of the property, as well as additional, new, future, higher, and better uses of Plaintiff's property, and will unreasonably deny the Plaintiff the quiet enjoyment of the property.

130. The intentional and substantial invasion, interference, annoyance, and nuisance by Baileyville, Navitas, Gamesa, and Adjacent Properties, upon Plaintiff's property will cause an unreasonable diminution of value of the property, an unreasonable restriction in the use of the property, and will otherwise deprive the Plaintiff of the highest and best use of said property.

131. By reason of the and substantial invasion, interference, annoyance, and nuisance of Plaintiff's property by Baileyville, Navitas, Gamesa, and Adjacent Properties, Plaintiff will suffered damages in excess of $75,000.00, which results in the depreciation of use and value of said property. The expert MAI real estate appraiser presented evidence at the Public Hearing that the placement of Wind Energy Conservation Systems near a property results in a decline of seventeen to twenty percent (17% to 20%) based on previous wind farm developments. Further studies entered into evidence at the Public Hearing demonstrated declines in values up to thirty percent (30%). Plaintiff currently owns 240 acres near the Wind Energy Conservation System approved under the Special Use Permit. The value of property located in this area of Ogle County

is approximately $6,000.00 per acre. Therefore the value of Plaintiff's property is approximately $1,440,000.00 (240 acres x $6,000.00 per acre). A seventeen to thirty percent (17% to 30%) reduction of the total value of Plaintiff's property would amount to a loss in value in excess $200,000.00 ($1,440,000.00 x .17% reduction in value = $244,800.00; $1,440,000.00 x .30% reduction in value = $432,000.00), which is more than the $75,000.00 requirement as set forth in 28 U.S.C. 1332.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court enter a judgment against the Ogle County Board of Commissioners, Zoning Board of Appeals, Adjacent Properties, Baileville, Navitas, and Gamesa in an amount greater than $75,000.00 and for such other relief this court deems just and equitable.

COUNT XII

INJUNCTIVE RELIEF AGAINST OGLE COUNTY BOARD OF COMMISSIONERS, ZONING BOARD OF APPEALS, ADJACENT PROPERTIES, BAILEYVILLE, NAVITAS AND GAMESA

1-92. Plaintiff hereby adopts Paragraphs 1 through 92 of the General Allegations as Paragraphs 1 through 92 of this Count XII for Injunctive Relief.

93-119. Reserved

120-125. Plaintiff hereby adopts Paragraphs 120 through 125 of Count X for Trespass, as Paragraphs 120 through 125 of this Count XII for Injunctive Relief.

126-131. Plaintiff hereby adopts Paragraphs

126 through 131 of Count XI for Public Nuisance, as Paragraphs 126 through 131 of this Count XII for Injunctive Relief.

132. Plaintiff has a clear, ascertainable and protective right to (i) not be deprived of property without due process of law, (ii) not be deprived of equal protection, (iii) be free of unreasonable trespass upon its property, and (iv) be free of substantial nuisance upon its property.

133. Plaintiff has no remedy at law to compensate for its loss of due process, under the law, equal protection under the law, unconstitutional taking under the law, trespass upon its property and substantial interference, annoyance, and nuisance.

134. Irreparable injury will result to Plaintiff's property if the Wind Energy Conversion System as authorized by the Special Use Permit are built.

WHEREFORE, Plaintiff, PATRICIA A. MUSCARELLO, hereby requests this honorable Court to enter a permanent injunction against:

A. The Ogle County Board of Commissioners and the Zoning Board of Appeals from administering, enforcing, or adopting the Special Use Permit or otherwise infringing upon the property rights of Plaintiff.

B. Baileyville, Navitas, Gamesa, and Adjacent Properties from building a Wind Energy Conversion System on the property adjacent to Plaintiff's property, or otherwise infringing upon the property rights of Plaintiff.

C. For such other relief this court deems just and equitable.

Respectfully Submitted:

DENKER & MUSCARELLO, LLC

By: s/Charles V. Muscarello
CHARLES V. MUSCARELLO
One of the Plaintiff's attorneys

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